

EXHIBIT G

Donna Sullivan

Page 1

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No.
97-cv-3496 (DRD) (MAS)

WALSH SECURITIES, INC., :
: Plaintiff, :
: vs. : DEPOSITION OF:
: : DONNA SULLIVAN
CRISTO PROPERTY MANAGEMENT,
LTD., a/k/a G.J.L. LIMITED;
OAKWOOD PROPERTIES, INC.;
NATIONAL HOME FUNDING, INC.;
CAPITAL ASSETS PROPERTY
MANAGEMENT & INVESTMENT CO.,
INC.; CAPITAL ASSETS PROPERTY
MANAGEMENT, L.L.C.; WILLIAM
KANE; GARY GRIESER; ROBERT
SKOWRENSKI, II; RICHARD CALANNI;
RICHARD DIBENEDETTO; JAMES R.
BROWN; THOMAS BRODO; ROLAND
PIERSON; STANLEY YACKER, ESQ.;
MICHAEL ALFIERI, ESQ.; RICHARD
PEPSNY, ESQ.; ANTHONY M.
CICALESE, ESQ.; LAWRENCE CUZZI;
ANTHONY D'APOLITO; DAP
CONSULTING INC.; COMMONWEALTH
LAND TITLE INSURANCE CO.;
NATIONS TITLE INSURANCE OF
NEW YORK, INC.; FIDELITY
NATIONAL TITLE INSURANCE CO.
OF NEW YORK, INC.; COASTAL
TITLE AGENCY; DONNA PEPSNY;
WEICHERT REALTORS; and VECCHIO
REALTY, INC., d/b/a MURPHY
REALTY BETTER HOMES AND
GARDENS :
Defendants. :
- - - - -

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1 TRANSCRIPT of the stenographic notes of
 2 the proceedings in the above-entitled matter, as
 3 taken by and before JANET BAILYN, a Certified
 4 Shorthand Reporter and Notary Public of the State of
 5 New Jersey, held at the office of STONE & MAGNANINI,
 6 150 John F. Kennedy Parkway, Short Hills, New Jersey,
 7 on September 27, 2011, commencing at 10:05 in the
 8 forenoon.

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1 APPEARANCES:

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24 Fidelity National Title Insurance
25 Co. of New York

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<p style="text-align: right;">Page 6</p> <p>1 DONNA SULLIVAN, having been duly sworn by 2 the Notary, testified as follows: 3 DIRECT EXAMINATION BY MEE: 4 Q. Welcome back. 5 A. Good morning. 6 Q. I'm Daniel Mee with Stone & Magnanini. 7 We represent Walsh Securities. With me is Amy Wagner 8 also from my firm. I know you have been here a 9 couple of times already but just to go over some of 10 the ground rules once again. With the court reporter 11 we will try not to speak over each other. Verbal 12 answers, that type of thing. 13 If you need a break, just let me know. 14 I just ask that a question not be pending at the time 15 that you request a break. 16 A. Okay. 17 Q. And that's it. So how is it that you 18 became the 30(b)6 witness for Commonwealth, Nations 19 and Fidelity? 20 A. I was asked to be the 30(b)6. I had 21 some knowledge obviously of Commonwealth because I 22 was -- although it was very distant memory, I have 23 knowledge more of the operations and, you know, the 24 parties who worked there and that type of thing for 25 Commonwealth having worked there when this claim</p>	<p style="text-align: right;">Page 8</p> <p>1 A. Prior to that it was held by Fidelity 2 National Title Insurance Company. 3 Q. And when did it become held by Fidelity? 4 A. Fidelity National Title Insurance of New 5 York acquired Nations on April first, 1996. Later -- 6 I don't know if it was a merger but Fidelity National 7 Title Insurance of New York, I guess the stock was 8 transferred. Fidelity National Title Insurance 9 Company, sister company, the Nations stock was 10 transferred to that sister company and then it merged 11 as I said in July of 2010. 12 Q. Does Fidelity currently hold all of the 13 liabilities for Nations, anything that occurred in 14 1996 or 1997? 15 A. Well, they owned them. They acquired 16 them in April of '96. To my knowledge they have a 17 liability. I haven't seen an issue raised to that, 18 that they don't. 19 Q. Did you have any conversations with 20 anyone who worked for Nations in 1996 or 1997 about 21 this case? 22 A. I don't believe that I -- since they 23 were acquired by Fidelity in '96 they really were not 24 operated as a separate -- although they remained an 25 active company, the management, the claims department</p>
<p style="text-align: right;">Page 7</p> <p>1 first came in. 2 I've worked for Fidelity for the last 3 nine years now, and most of the claims department and 4 I think the people that were involved in this are no 5 longer with the company. There's a senior claims 6 attorney handling it, but I probably have more 7 familiarity with the -- maybe with the agent function 8 so they decided they wanted to select me for this 9 also. 10 Q. Were you ever employed by Nations? 11 A. No. 12 Q. Have you ever acted as a 30(b)6 witness 13 for Nations in any other litigation? 14 A. No. And I just want to say I think 15 Nations was an active company, so to some extent 16 maybe I was an officer because I think I'm considered 17 an officer for any of the entities held by FNF, 18 Fidelity National Financial, the parent company. So 19 I might have had authority but I was not an employee 20 per se of Nations. 21 Q. So it's a division -- is Nations a 22 division of Fidelity? 23 A. In July of 2010 Nations merged into 24 Fidelity and is no longer an active company. 25 Q. And then --</p>	<p style="text-align: right;">Page 9</p> <p>1 were really the same people. So I don't know that 2 I've spoken to anybody that actually was an employee 3 of Nations. 4 Q. Okay. 5 (Nations-1, Notice of Deposition, is 6 received and marked for identification.) 7 Q. I'm handing you what's been marked as 8 Nations-1. It's the Notice of Deposition for the 9 30(b)6 witness for Nations Title Insurance of New 10 York. Did you review this notice of deposition? 11 A. I did. 12 Q. When were you first notified that you 13 would be the 30(b)6 witness for Nations? 14 A. More than a year ago, I think. 15 Q. And if you turn to page -- well, it's 16 after page three. It's actually Schedule A. There 17 you go. Thanks. This is a list of topics or areas 18 of inquiry that we wanted to ask you questions on in 19 your deposition today. As a 30(b)6 witness you're 20 required to educate yourself on certain issues 21 concerning the company. And I just want to run 22 through some of these and ask you what you did to 23 educate yourself on these topics. 24 So number three it states: "Since 25 January 1996 the company's organizational structure,</p>

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<p style="text-align: right;">Page 10</p> <p>1 the roles and responsibilities of personnel and 2 officers in its various departments."</p> <p>3 Who did you speak to in order to 4 familiarize yourself with that topic?</p> <p>5 A. I spoke to Keith Weller, Chris Marra, 6 Larry Feinberg.</p> <p>7 Q. Sorry. Could you say that again?</p> <p>8 A. Chris Marra, Keith Weller, and I think I 9 spoke to Larry but that was pretty secondary.</p> <p>10 Q. And where are Mr. Weller, Marra and 11 Feinberg today?</p> <p>12 A. They're all employees of the company. 13 Keith Weller is state counsel in Pennsylvania. Chris 14 Marra had left the company for a while but rejoined a 15 couple of months ago and he's working out of 16 Pennsylvania. And Larry Feinberg is in New Jersey. 17 I think it's East Brunswick. I'm not sure.</p> <p>18 Q. Were they working for -- I'm just going 19 to say Nations/Fidelity in 1996 and 1997?</p> <p>20 A. Keith I believe -- Keith was working for 21 Fidelity I believe in '96 and '97. Chris I think 22 came to the company in 2002 or -- yeah, I believe 23 2002. Larry had been with Chicago Title so when 24 Chicago and Fidelity became one family, which I 25 believe was somewhere around 2000, I'm not sure of</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. Who is Roberta?</p> <p>2 A. Roberta, I believe she has some type of 3 accounting function in Pennsylvania but she could 4 track remittances.</p> <p>5 Q. Was she able to track the remittances of 6 the policies and closing protection letters in this 7 litigation?</p> <p>8 A. I asked her to run one chart that I -- 9 well, this is not just Nations. This was Nations and 10 Fidelity but some of the Nations files are on the 11 same chart, and I asked her to run -- I think there 12 were 80 something on that particular chart. So I 13 asked her to run those and see if she could find any 14 remittance information for them. And I forget how 15 many she found, maybe 20 or 19, something like that.</p> <p>16 Q. Did you produce that chart?</p> <p>17 A. I didn't -- I don't even know -- I don't 18 know who produced that chart. I'm not sure where 19 that -- there was a chart in the file that listed a 20 lot of the numbers. It was not a chart that I 21 created.</p> <p>22 Q. Okay. I guess the better question to 23 make this a little more streamlined would be to ask: 24 In reviewing these topics who did you -- in all of 25 these topics who did you have conversations with?</p>
<p style="text-align: right;">Page 11</p> <p>1 the exact date of that, he would have had some 2 knowledge although he was not a Fidelity employee.</p> <p>3 Q. Did any of these individuals have any 4 active role in this litigation? Do they -- let me 5 rephrase -- let me strike that.</p> <p>6 How many times did you talk to these 7 fellows?</p> <p>8 A. I talked to Keith at least twice and 9 Chris at least twice.</p> <p>10 Q. And Larry?</p> <p>11 A. Larry I think I talked to once maybe 12 last summer when I was first preparing for this.</p> <p>13 Q. You say at least twice for Chris and for 14 Keith. More than five times or --</p> <p>15 A. In preparation for this?</p> <p>16 Q. Yes.</p> <p>17 A. Not more than five, no.</p> <p>18 Q. Back to Schedule A. Number five, it 19 states: "The total number and process of issuing 20 closing service letters by the company or its agent 21 in connection with the real property transactions at 22 issue in this litigation."</p> <p>23 Who did you speak to in order to 24 familiarize yourself with that topic?</p> <p>25 A. Chris Marra and Roberta DeFelice.</p>	<p style="text-align: right;">Page 13</p> <p>1 A. Okay. Mr. Hayes, Keith Weller, Chris 2 Marra, Larry Feinberg, Roberta DeFelice, Matthew 3 Reeney. I had some e-mail exchange with I think it's 4 Robert Schmidlin, S-c-h-m-i-d-l-i-n, and I think the 5 other man's name is Clancey. He was also at 6 Commonwealth. He produced similar I think financial 7 information so I may have the last name wrong but it 8 is in the other deposition also.</p> <p>9 Q. Was his first name Clancey or last name 10 Clancey?</p> <p>11 A. I don't know. But Clancey was in it.</p> <p>12 Q. Okay. At number six on Schedule A it 13 states: "The total number and process of issuing 14 title insurance policies issued by the company or its 15 agents in connection with real property transactions 16 at issue in this litigation."</p> <p>17 Do you know the total number of title 18 policies that were issued by the company?</p> <p>19 A. For Nations -- I don't know the total 20 number. I know there were policy numbers listed on 21 the chart that I sought remittance information on. I 22 had asked Roberta to give me copies of policies that 23 matched those along with the remittance numbers. She 24 couldn't come up with remittance numbers and copies 25 of some of the policies that matched the policy</p>

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<p style="text-align: right;">Page 14</p> <p>1 numbers on the chart, and I think some of them 2 actually didn't seem to match the property, so I'm 3 not real sure where those numbers came from. And I'm 4 not sure if the agent issued some policies that we 5 didn't get copies of or remittances, so I don't know 6 that I can give you a total number of what the agent 7 issued.</p> <p>8 Q. Can you estimate for Nations?</p> <p>9 A. I can't really.</p> <p>10 Q. More than five?</p> <p>11 A. No, I didn't distinguish it well from 12 the Fidelity on the same chart, so I don't recall how 13 many policies she actually gave me that were Nations. 14 I'm sure there was at least one, but I don't know 15 that there was five.</p> <p>16 Q. So you had a total of 81, I think you 17 testified?</p> <p>18 A. Some of those were Fidelity, some of -- 19 most of those were Fidelity.</p> <p>20 Q. So out of the total 81 how many policies 21 do you recall?</p> <p>22 A. For Nations?</p> <p>23 Q. For both.</p> <p>24 A. I think it might have been around 20.</p> <p>25 Q. Okay. And number seven on Schedule A --</p>	<p style="text-align: right;">Page 16</p> <p>1 A. No. 2 MR. HAYES: Let me object to the form. 3 I think she said she thought there were about 20 4 policies but less than that in remittances. 5 THE WITNESS: The reverse. 6 MR. MEE: The reverse.</p> <p>7 A. She did have some remittances without 8 policies, which is unusual to me, so I don't remember 9 exactly how many policies. And there were a couple 10 of files where I know there was a remittance for the 11 policy amount but she didn't have the \$25 fee, and I 12 don't know why she didn't get the \$25 fee because 13 presumably a letter was issued, but she didn't get a 14 copy of it and didn't get the fee on a couple of 15 them.</p> <p>16 Q. So were there less \$25 fees than there 17 were remittances for policies?</p> <p>18 A. Yes. For the insurance premium 19 remittance, yes.</p> <p>20 Q. Okay. Was that also contained in the 21 chart?</p> <p>22 A. I just have handwritten notes next to -- 23 I reproduced a copy of a chart I found in the file to 24 send her and she just handwrote some figures next to 25 it on what she could find from her system.</p>
<p style="text-align: right;">Page 15</p> <p>1 A. And I should say I have remittance 2 information on 20. I think she did have some 3 remittances without a policy number based on a 4 commitment. So again it could be 20 that have 5 remittances. It could have been fewer than had the 6 policy copies.</p> <p>7 Q. Okay. At number seven it states: 8 "Since January of '96 the policies and procedures for 9 issuing closing service protection letters including 10 communications with brokers, agents and attorneys as 11 well as the issuance of binders and commitments."</p> <p>12 Were you able to track how many closing 13 service protection letters were issued by Nations 14 pertaining to the properties at issue in this case?</p> <p>15 A. No. The only thing I could identify was 16 on which files of those 80 we received the \$25 fee 17 for issuing the closing service letter, and some of 18 those they had a policy remittance amount and the 19 closing service amount, and where she was able to 20 give me the policies and she had a copy of the CSL 21 she gave me that.</p> <p>22 Q. Were they the same number? In other 23 words, did you have the same number of -- you said 24 you had about 20 out of the 81 policies. Did you 25 have like 20 out of the 81 closing service letters?</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. Do you know when that chart was 2 prepared?</p> <p>3 A. I don't recall. It was a chart I took 4 from one of the claim files.</p> <p>5 MR MEE: If we don't have that I think 6 we're going to make that part of a request to get 7 that document.</p> <p>8 Q. Schedule A at number eight, it says: 9 "Since January 1, 1996 the company's policies and 10 procedures for evaluating qualifications of closing 11 agents and closing attorneys and contracts and/or 12 agreements including Robert Agel at Coastal Title 13 Agency Inc. Stan Yacker, Michael Alfieri, Richard 14 Pepsny and Anthony Cicalese."</p> <p>15 Who did you speak with in order to 16 familiarize yourself with that topic?</p> <p>17 A. Chris Marra.</p> <p>18 Q. Is that it?</p> <p>19 A. Yes.</p> <p>20 Q. Turning the page to number 12, it 21 states: "The company's underwriting memoranda and 22 any loan issued in connection with the real property 23 transaction at issue in this litigation."</p> <p>24 Did you review any of the company's 25 underwriting memoranda in preparation for this</p>

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<p style="text-align: right;">Page 18</p> <p>1 deposition?</p> <p>2 A. Yes.</p> <p>3 Q. Do you know whether or not those were</p> <p>4 produced?</p> <p>5 A. Let me see. I'm sorry. Let me reread</p> <p>6 this number 12. Company's underwriting memoranda on</p> <p>7 any loan issued in connection with real property</p> <p>8 transactions. I'm not sure what all that means. As</p> <p>9 far as underwriting memos except to the extent there</p> <p>10 was an e-mail about the participants in these loans.</p> <p>11 I have looked at general underwriting memoranda and</p> <p>12 there was I think something issued by underwriting</p> <p>13 counsel with respect to the parties here. Other than</p> <p>14 that I'm not sure there's underwriting memos specific</p> <p>15 to the loans in this.</p> <p>16 Q. And you reviewed that in advance of this</p> <p>17 deposition?</p> <p>18 A. I did.</p> <p>19 Q. Do you know whether or not you produced</p> <p>20 any of those underwriting memoranda that you</p> <p>21 reviewed?</p> <p>22 A. The general underwriting memoranda?</p> <p>23 Q. Both. Any underwriting memoranda that</p> <p>24 you reviewed in advance of this deposition, do you</p> <p>25 know whether or not they were produced?</p>	<p style="text-align: right;">Page 20</p> <p>1 January 1, 1996 any policy claims resolved or paid to</p> <p>2 any entity on the loans at issue in this litigation</p> <p>3 including but not limited to Walsh Securities,</p> <p>4 Grunthal Financial, Temple Inland or Bankers Trust.</p> <p>5 Who did you speak to to familiarize yourself with</p> <p>6 that topic?</p> <p>7 A. I spoke with Ed and I also researched</p> <p>8 some of that myself.</p> <p>9 Q. I don't want to know about</p> <p>10 conversations -- substance of conversations that you</p> <p>11 had with your counsel but did you -- were you able to</p> <p>12 determine whether or not any entity was paid on loans</p> <p>13 that are at issue in this litigation?</p> <p>14 A. I don't know that -- I don't know loans</p> <p>15 that are part of this litigation. I'm going to say</p> <p>16 no, I don't think any that were part of this</p> <p>17 litigation.</p> <p>18 Q. Were other -- if you don't know --</p> <p>19 A. I don't know.</p> <p>20 Q. Were --</p> <p>21 MR. HAYES: Why don't you just tell</p> <p>22 counsel the one that you're aware of that was</p> <p>23 resolved, and then he can determine whether it's part</p> <p>24 of the litigation so there's no confusion about your</p> <p>25 answer.</p>
<p style="text-align: right;">Page 19</p> <p>1 A. I don't know.</p> <p>2 MR. MEE: Okay. We're going to make a</p> <p>3 request for that as well, Ed.</p> <p>4 Q. At number 15 it states: "Since January</p> <p>5 1, 1996 the company's procedures regarding its claims</p> <p>6 review process and its process to approve or deny</p> <p>7 coverage for policy claims at issue in this</p> <p>8 litigation."</p> <p>9 Was there a claims manual for Nations?</p> <p>10 A. Not to my knowledge.</p> <p>11 Q. Was there one for Fidelity?</p> <p>12 A. At that time in '96, '97 I'm told there</p> <p>13 was only a California Western Regional Manual, and</p> <p>14 that was not used in New Jersey.</p> <p>15 Q. So how were -- well, let me strike that.</p> <p>16 Were there any guidelines for claims counsel or</p> <p>17 anyone in the claims office for reviewing claims?</p> <p>18 A. I don't know for -- these claims came in</p> <p>19 in '97, '98. I don't know specifically for those</p> <p>20 years.</p> <p>21 Q. For Nations or for Fidelity?</p> <p>22 A. Or for Fidelity.</p> <p>23 Q. Is there currently a claims manual?</p> <p>24 A. Yes.</p> <p>25 Q. And then at 16 it states: "Since</p>	<p style="text-align: right;">Page 21</p> <p>1 A. I don't know the loan number or the file</p> <p>2 number obviously, but it was the one where the</p> <p>3 borrower's name was Harris and Ames I believe was the</p> <p>4 plaintiff in litigation.</p> <p>5 Q. Okay.</p> <p>6 A. And there was a payment made to Ames.</p> <p>7 Q. And was that the only payment that</p> <p>8 you're aware of on loans concerning Walsh Securities?</p> <p>9 A. The only payment to -- yes.</p> <p>10 Q. Now, at number 17 it states: "The</p> <p>11 identity of all properties for which the company</p> <p>12 claims it corrected mistakes in title or lien</p> <p>13 priority on behalf of Walsh Securities or any other</p> <p>14 interested party."</p> <p>15 With whom did you speak in order to</p> <p>16 familiarize yourself with that topic?</p> <p>17 A. Ed, and obviously I reviewed what we had</p> <p>18 in our files.</p> <p>19 Q. Were you able to determine whether or</p> <p>20 not the company was able to correct mistakes in title</p> <p>21 or lien priority on behalf of Walsh Securities?</p> <p>22 A. I did not see that the company did that.</p> <p>23 Q. At 19 it states: "The documents</p> <p>24 reviewed by the company in connection with its</p> <p>25 investigation or review of any claims by Walsh</p>

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<p style="text-align: right;">Page 22</p> <p>1 Securities including those referenced in paragraph 16 2 of the schedule."</p> <p>3 Was there an investigation file as part 4 of -- file as part of this litigation, a -- I guess I 5 should say like a claims investigation file?</p> <p>6 A. Well, there are many files given the 7 size of this litigation and the number of properties 8 involved, so there's more than one file, but there 9 are files that include some investigation -- that 10 evidence investigation.</p> <p>11 Q. Is there a particular individual who's 12 the custodian of those documents, would be considered 13 the custodian of those documents?</p> <p>14 A. The documents that I've reviewed are in 15 my office.</p> <p>16 MR. KOTT: Off the record.</p> <p>17 (A discussion takes place off the 18 record).</p> <p>19 Q. Moving on to number 21. "All facts and 20 circumstances concerning the company's decision 21 regarding the nonpayment of title insurance and 22 closing protection letter claims" -- I'm sorry -- 23 "closing service letter claims in connection with the 24 real estate transaction at issue in this litigation."</p> <p>25 With whom did you speak in order to</p>	<p style="text-align: right;">Page 24</p> <p>1 MR. HAYES: Other than the crossclaim in 2 this case?</p> <p>3 MR. MEE: Yes, sorry. I was referring 4 to litigation that Commonwealth was involved in. I 5 wasn't aware --</p> <p>6 A. I don't believe that Fidelity or Nations 7 was involved in that type of litigation.</p> <p>8 Q. Okay. Number 27, "The termination of 9 Coastal Title Agency as the company's agent and the 10 basis for that termination."</p> <p>11 When was Coastal Title Agency terminated 12 as --</p> <p>13 A. I believe it was terminated in December 14 of '03. Certainly notice of termination was sent in 15 November '03 but I think it was in effect December.</p> <p>16 Q. Who made that decision to terminate 17 Coastal?</p> <p>18 A. I don't know. The parties that 19 terminated them were the state office in New Jersey 20 and -- in 2003. I don't know if it was Kevin Cairns 21 or Chris Marra who signed the letter.</p> <p>22 Q. Were you part of that decision-making 23 process?</p> <p>24 A. No.</p> <p>25 Q. On page four at 29, it states: "The</p>
<p style="text-align: right;">Page 23</p> <p>1 familiarize yourself with that topic?</p> <p>2 A. Again, I discussed this with Ed and I've 3 reviewed the files I have.</p> <p>4 Q. Number 24, it says: "The company's 5 interactions or communications with any other 6 defendants in this litigation."</p> <p>7 Did you speak to anybody about that 8 topic?</p> <p>9 A. I might have briefly discussed with Ed 10 but -- yeah, Ed.</p> <p>11 Q. Anybody else?</p> <p>12 A. No.</p> <p>13 Q. Do you know whether or not there have 14 been any communications between the company and any 15 other defendant in this litigation aside from 16 Commonwealth and Fidelity?</p> <p>17 A. Interaction or communications with any 18 other defendant? Well, obviously there's been with 19 Coastal, some settlement communications I assume that 20 went along with that. Not that I reviewed all those 21 but I know that they exist and I am not familiar with 22 any other communications with other defendants.</p> <p>23 Q. Was there any litigation between Nations 24 and Robert Skowrenski or NHF?</p> <p>25 A. I don't believe so.</p>	<p style="text-align: right;">Page 25</p> <p>1 company's fees, commissions, bonuses, contracts, 2 agreements or other special compensation paid to any 3 of the defendants in this litigation by the company 4 or any of the company's affiliates relating to the 5 title insurance at issue in this litigation."</p> <p>6 With whom did you speak in order to 7 familiarize yourself with that topic?</p> <p>8 A. I don't know that I spoke to anyone on 9 this. I reviewed the agency agreement and agency 10 file.</p> <p>11 Q. Were you able to determine how much was 12 paid to Coastal Title Agency on the -- as 13 compensation on the properties at issue in this 14 litigation?</p> <p>15 A. No, I cannot. I didn't have any 16 payments made to Coastal that are specific to this 17 property -- to these properties.</p> <p>18 Q. Number 30 it says: "The company's 19 profit on the title insurance policies issued in 20 connection with the real property transactions at 21 issue in this litigation."</p> <p>22 Were you able to determine the amount of 23 profit on the policies that you said you were able to 24 find?</p> <p>25 A. To the extent the remittance reflects --</p>

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<p style="text-align: right;">Page 26</p> <p>1 and I'm not sure if that's profit but that's 2 certainly income. I have the limited remittance 3 information that is on that chart that I mentioned 4 previously.</p> <p>5 Q. At number 32 it says: "The company's 6 document retention policy."</p> <p>7 Was there a retention policy for 8 Nations?</p> <p>9 A. At that time I don't know if there was 10 any policy, although I think the state regulation 11 would require you to keep title insurance files for 12 15 years.</p> <p>13 Q. Do you know whether or not any documents 14 were destroyed during the course of this litigation?</p> <p>15 A. I don't know that.</p> <p>16 Q. You had mentioned that you met with 17 Mr. Hayes in order to prepare for this deposition. 18 Did you meet with any other attorneys?</p> <p>19 A. To prepare for this, no.</p> <p>20 Q. How many times did you meet with 21 Mr. Hayes?</p> <p>22 A. Once.</p> <p>23 Q. When was that?</p> <p>24 A. Yesterday.</p> <p>25 Q. For how long?</p>	<p style="text-align: right;">Page 28</p> <p>1 in connection with the responses here, the 2 underwriting memoranda, the retention policies, those 3 documents I mentioned.</p> <p>4 Q. Did you review the company's responses 5 to Interrogatories?</p> <p>6 A. I think I looked at them quickly and 7 most of them referred to I think the repositories.</p> <p>8 Q. Probably the same for the request to 9 produce documents, I would imagine. Did you look at 10 that?</p> <p>11 A. I don't recall.</p> <p>12 Q. How about the company's Answer to the 13 Fourth Amended Complaint?</p> <p>14 A. I'm sure I looked at that at one point. (Nations-2, Answer to Fourth Amended 16 Complaint, is received and marked for 17 identification.)</p> <p>18 Q. You have been handed what's been marked 19 Nations-2 at the top. It's the company's Answer to 20 the Fourth Amended Complaint, Separate Defenses, 21 Answer to Crossclaims, Crossclaim, Third-Party 22 Complaint and Jury Demand. I direct you to page 15. 23 At the top you will see it states: "First 24 Affirmative Defense." These are the -- well, let me 25 start, this is the Answer on behalf of both Nations</p>
<p style="text-align: right;">Page 27</p> <p>1 A. Maybe two hours, two and a half hours.</p> <p>2 Q. Did you meet with any potential experts 3 in this case?</p> <p>4 A. No.</p> <p>5 Q. Do you know whether or not the company 6 has retained an expert in this case?</p> <p>7 A. Yes.</p> <p>8 Q. What is his name?</p> <p>9 MR. HAYES: Objection.</p> <p>10 MS. WAGNER: You can answer.</p> <p>11 MR. HAYES: No, she can't answer.</p> <p>12 MR. MEE: Why not?</p> <p>13 MR. HAYES: Because you will learn the 14 experts consistent with Judge Magistrate Shipp's 15 order the same way we have waited.</p> <p>16 Q. What documents did you review aside from 17 the ones we just went over? Are there any other 18 documents that you reviewed in preparation of this 19 deposition?</p> <p>20 A. That's a broad -- documents, obviously I 21 reviewed what files I possess, a couple of copies of 22 letters that were provided to me by counsel. I had 23 gone through the claims system to look on whether I 24 could track payments made to other entities as we 25 discussed. What other documents? Certain documents</p>	<p style="text-align: right;">Page 29</p> <p>1 and Fidelity?</p> <p>2 A. Yes.</p> <p>3 Q. Can you just briefly explain why there 4 was a single answer for both companies?</p> <p>5 A. I don't know the date of this document 6 but I'm assuming at this point the parent company of 7 Fidelity had acquired Commonwealth.</p> <p>8 Q. Okay. And so at page 15, the First 9 Affirmative Defense, it states: Answering, 10 defendants have no liability to plaintiff under the 11 closing service letters because, A, the closing 12 letters were not issued to plaintiff."</p> <p>13 What is the basis for that contention?</p> <p>14 A. Well, letters themselves are written to 15 National Home Funding and it says -- well, I guess 16 its successors and assigns.</p> <p>17 Q. Does the company not include Walsh 18 Securities as its successors and assigns?</p> <p>19 A. I think they consider the successors and 20 assigns to be limited to the -- well, I think it's 21 kind of tied together with the language of the letter 22 so I'm not sure. The closing letters were not issued 23 to the plaintiff. I think there are -- in the letter 24 itself it calls, you know, for title insurance 25 specified for your protection, which is not to Walsh.</p>

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<p style="text-align: right;">Page 30</p> <p>1 I think the closing letters -- in the actual language 2 on the letter it could be really to the successor to 3 NHF who is making the loan at the time of closing. 4 So I'm not sure I have -- I'm not sure -- the answer 5 is they may not consider Walsh a successor, and I'm 6 not sure if I can express the basis.</p> <p>7 Q. Is it that -- let me rephrase. If a 8 closing service letter is issued to -- let's take 9 away National Home Funding, but to another company 10 and it says: Company X and it successors and 11 assigns -- strike that.</p> <p>12 Let's move on to B. B states: "The 13 closing service letters do not protect against the 14 type of conduct alleged by the plaintiff."</p> <p>15 What's the basis for that contention?</p> <p>16 A. The language in the letter itself 17 protects against certain acts that affect the 18 validity or the priority of the mortgage to be 19 insured, and the acts that plaintiff are making 20 claims with respect to do not fall within the 21 coverage language in that letter.</p> <p>22 Q. Is it the company's position that Walsh 23 Securities was the first lien holder in all of the 24 properties at issue in this case?</p> <p>25 A. Well, clearly they were not because</p>	<p style="text-align: right;">Page 32</p> <p>1 A. I don't think it's protecting any of 2 those parties. It may be providing coverage with 3 respect to the property and cover certain actions by 4 the attorney.</p> <p>5 Q. So is it covering the action -- is it 6 covering the transaction or is it covering the 7 attorney or is it covering the property?</p> <p>8 MR. HAYES: Same objection as before.</p> <p>9 MR. KOTT: Join.</p> <p>10 A. I think the letter speaks for itself. 11 It's providing certain coverage when there's a title 12 insurance commitment provided and it's insuring that 13 the attorney complies with the closing instructions 14 to the extent that they affect the validity and 15 priority of the mortgage.</p> <p>16 Q. At D it says: "The closing service 17 letters are invalid on their face in that they are 18 not dated."</p> <p>19 What is the basis for that contention?</p> <p>20 A. I assume there must be some letters that 21 are not dated, but again I have not reviewed each of 22 those letters and I don't know that for...</p> <p>23 Q. And down at the bottom, F, it says: 24 "The closing service letters were induced by fraud."</p> <p>25 What is the basis for that contention?</p>
<p style="text-align: right;">Page 31</p> <p>1 certain documents were not recorded.</p> <p>2 Q. At C it states: "The closing service 3 letters are invalid on their face in that they did 4 not make references to a particular transaction."</p> <p>5 What is the basis for that contention?</p> <p>6 A. I'm not familiar with that but I am 7 assuming each closing service letter has to specify 8 the property, the transaction and the reference, and 9 I don't know if there are certain ones that were not 10 completed and didn't specify the transaction. I 11 haven't reviewed all the closing service letters.</p> <p>12 Q. So does the closing service letter 13 protect the actions of a particular attorney or is it 14 the particular property or is it the particular 15 transaction?</p> <p>16 A. Can you repeat that?</p> <p>17 Q. I will ask the court reporter to read 18 that one.</p> <p>19 (The pending question is read by the 20 court reporter.)</p> <p>21 MR. HAYES: Object to the form of the 22 question in that it implies that the answer would be 23 only one of those.</p> <p>24 MR. KOTT: I join in the objection. I 25 also object because it's a compound question.</p>	<p style="text-align: right;">Page 33</p> <p>1 A. I assume that it refers to the fact that 2 NHF was participating or allegedly participating and 3 some Walsh Securities employees were allegedly 4 participated in the fraud or had knowledge that this 5 was going on and were induced to issue these letters 6 to insure without having that information disclosed 7 to us.</p> <p>8 Q. Coastal Title Agency was the issuing 9 party of the closing service letters. Is that right?</p> <p>10 A. For most of the transactions.</p> <p>11 Q. So who would have induced Coastal Title 12 Agency to issue the closing service letters?</p> <p>13 A. Well, they would have been requested.</p> <p>14 Q. By whom?</p> <p>15 A. By the closing attorney usually.</p> <p>16 Q. At the Second Affirmative Defense it 17 states: "Plaintiff did not rely upon closing service 18 letters in completing the mortgage transactions 19 complained of in the Fourth Amended Complaint."</p> <p>20 What is the basis for that contention?</p> <p>21 A. Well, I have to -- I'm guessing at these 22 and --</p> <p>23 MR. HAYES: Don't guess. If you don't 24 know say you don't know.</p> <p>25 A. I don't know.</p>

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<p style="text-align: right;">Page 34</p> <p>1 Q. I guess that was another instruction I 2 should have given you at the beginning, which is that 3 if I ask you a question and you respond I'm going to 4 assume, and since it's all written down, you're under 5 oath, we're all going to assume that you understand 6 the question and that you can answer the question. 7 So I would ask you not to guess on any responses. 8 The next page, the Fourth Affirmative 9 Defense states: "The plaintiff is charged with 10 knowledge and conduct of its officers, agents and/or 11 employees in this matter. Plaintiff's officers, 12 agents and/or employees participated in the scheme 13 alleged in the Fourth Amended Complaint." 14 What is the basis for that contention? 15 A. Well, I assume -- well, again, I assume 16 it has to do with the pleas, allocution statements of 17 several defendants in this action that -- either 18 admissions of certain acts of employees of Walsh or 19 other parties that alleged Walsh employees' actions 20 in connection with the fraud. 21 Q. Anything else? 22 A. I don't know. 23 Q. The Fifth Affirmative Defense says: 24 "Plaintiff's claims arise from the conduct of 25 individuals and/or entities over which answering</p>	<p style="text-align: right;">Page 36</p> <p>1 property has a first lien. 2 Q. So do you know whether there are 3 properties on -- do you know -- of these subject 4 premises do you know whether plaintiff does not hold 5 a valid first lien on a certain number of properties? 6 That was a confusing question. 7 MR. HAYES: Let me object anyway, 8 whether confusing or not, unless you're going to 9 identify the subject premises about which your 10 question is addressed since I think you guys have 11 acknowledged finally that's it's not all of the 220 12 files on which you're actually contending there's a 13 title problem. 14 MR. MEE: Thank you. But I'm going to 15 go back to what Mr. Kott said on Saturday, which is 16 we all know how to object and I would appreciate it 17 if you would keep your objections to form or 18 privilege rather than give speaking objections and 19 advising the witness through your speaking objection. 20 Q. So back to the question. Plaintiff -- 21 the second part of this affirmative defense states: 22 "Plaintiff maintains a valid first mortgage lien on 23 the subject premises." 24 To which subject premises are you 25 referring to in this affirmative defense?</p>
<p style="text-align: right;">Page 35</p> <p>1 defendants had no control." 2 What is the basis for that contention? 3 A. Again, I was not a party to drafting 4 this but I assume it refers to actions of NHF, the 5 attorneys or other parties that have -- and Walsh's 6 own -- Walsh is the plaintiff but other parties that 7 we have no control over. 8 Q. The Sixth Affirmative Defense says: 9 "Plaintiff's claims against answering defendant are 10 barred by contributory and/or comparative 11 negligence." Strike that. 12 Moving on to the Eighth Affirmative 13 Defense. "The claims asserted by plaintiff do not 14 arise under the title insurance policies in each 15 transaction pleaded in the Fourth Amended Complaint. 16 Plaintiff maintains a valid first mortgage lien on 17 the subject premises." 18 Did Nations conduct an investigation to 19 determine whether or not plaintiff maintains a valid 20 first mortgage lien on the subject premises? 21 A. I know they have done some search work 22 and I believe it encompasses all these files, but I'm 23 not positive of that. And I think certainly some of 24 them have -- had first liens and have actually been 25 foreclosed I believe, but I'm not sure that every</p>	<p style="text-align: right;">Page 37</p> <p>1 A. I can't specify which properties of all 2 the properties. I'm not sure if you're talking about 3 Nations or Fidelity, but even so I haven't looked at 4 each property and have in my mind which property it 5 applies to and which it doesn't. I believe there are 6 some properties that Walsh does have a first lien on. 7 Q. That are the subject of this litigation? 8 A. I believe so. 9 Q. Under the Ninth Affirmative Defense it 10 states: "Plaintiff has failed to join the borrowers 11 as necessary parties to this action. The borrowers 12 have executed notes in favor of plaintiff agreeing to 13 repay the sums of money due to plaintiff. Plaintiff 14 should be required to exhaust the collateral prior to 15 moving forward with this litigation." 16 What is the basis for that contention? 17 A. Well, I assume that there must be some 18 notes from borrowers where we have not waived 19 deficiency actions and we haven't determined your 20 losses, if you haven't exhausted your ability to 21 pursue a note. 22 Q. If Walsh has a valid closing service 23 letter claim against the company, does it state 24 anywhere in the closing service letter that Walsh 25 must first exhaust their claims against note holders?</p>

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<p>1 MR. HAYES: Object to the form. You can 2 answer.</p> <p>3 A. Not that specific language but I would 4 have to review the letter and see if there's -- what 5 else it says. Plus I think there's probably some 6 language that you have to suffer an actual loss that 7 may be tied to the policy's conditions, terms and 8 conditions also, so I think you would have to 9 establish an actual loss.</p> <p>10 Q. So does the -- are you stating that the 11 policy has that language in it?</p> <p>12 A. I'm trying to recall the policy language 13 but certainly there's exclusions where the insured 14 hasn't suffered a loss. I mean Exclusion 3, I don't 15 know if it's C or D, where you have no loss I think 16 but I think that's a prerequisite of any recovery is 17 that you have to establish what your loss is and 18 mitigate your damages. If you have a note to pursue 19 I would think that you would have to pursue that.</p> <p>20 Q. We can put that aside for the time 21 being.</p> <p>22 A. Okay.</p> <p>23 Q. You stated before that you were the 24 custodian of all the documents that pertained to the 25 company. Where -- I'm sorry, was that -- did I</p>	<p>1 MR. MEE: Okay. We're going to make 2 that as part of our request as well, Ed.</p> <p>3 Q. You stated before that you had reviewed, 4 maybe briefly, but our Request For the Production of 5 Documents. Were you able to find any documents 6 responsive to those requests?</p> <p>7 A. I think I reviewed the response to 8 Interrogatories. I'm not sure if I reviewed the 9 response to a document request.</p> <p>10 Q. Okay. Sorry. Were documents produced 11 by Nations and Fidelity separately or in combination?</p> <p>12 A. I don't know. I assume they were done 13 together but I don't know.</p> <p>14 (Nations-3, Letter dated July 28, 1997, 15 is received and marked for identification.)</p> <p>16 Q. You have been handed what's been marked 17 Nations-3. It's a letter dated July 28, 1997 from 18 Jeffrey Goodman at Latham & Watkins to Kevin S. 19 Cairns, C-a-i-r-n-s, as Nations Title Insurance of 20 New York's underwriting counsel.</p> <p>21 Did you review this letter in 22 preparation of your deposition today?</p> <p>23 A. I did look at it, yes.</p> <p>24 Q. I know you had mentioned Kevin Cairns 25 earlier. Is he still with Nations?</p>
<p>1 misspeak?</p> <p>2 A. To this claim obviously, not to all 3 documents of Nations obviously.</p> <p>4 Q. I apologize. Right. Yes. Who did you 5 get those documents from?</p> <p>6 A. From my review they were already in the 7 office. The claim is being handled by another 8 attorney in our office.</p> <p>9 Q. Who is that other attorney?</p> <p>10 A. Vincent Sharkey.</p> <p>11 Q. And you gave those files to Mr. Hayes at 12 some point?</p> <p>13 A. What files?</p> <p>14 Q. The Nations files.</p> <p>15 A. The -- our claim files?</p> <p>16 Q. Yes. Yes.</p> <p>17 A. I don't know if Ed has been given our 18 claim files.</p> <p>19 Q. So you don't know whether or not those 20 have been produced as part of this litigation?</p> <p>21 A. No, I don't know.</p> <p>22 Q. Do you know whether or not they have 23 been reviewed by counsel in order to produce them as 24 part of this litigation?</p> <p>25 A. I don't know.</p>	<p>1 Page 39</p> <p>1 A. No.</p> <p>2 Q. Or Fidelity, I should say?</p> <p>3 A. No.</p> <p>4 Q. When did he leave?</p> <p>5 A. I believe he left in 2003.</p> <p>6 Q. Where is he now?</p> <p>7 A. First American.</p> <p>8 Q. On page three of the letter there's a 9 schedule, it's Schedule A. It's a list of various 10 properties. Do you know what affirmative steps the 11 company took to investigate these particular 12 properties?</p> <p>13 A. I believe at one point they requested 14 the files certainly from Coastal. I think also 15 from -- was it Monmouth Title? What is the other 16 agent? I believe the initial investigation they were 17 requesting those files from Bob Agel, and I think, 18 you know, suit ensued fairly rapidly. I think they 19 requested additional documents from Latham & Watkins 20 or Walsh. I don't know if any of the letters were 21 direct, but I think they were waiting for the loan 22 files and different documentation to review.</p> <p>23 Q. As part of that investigation did 24 Nations ever determine whether or not Walsh 25 Securities had valid title claims on these</p> <p>1 Page 41</p>

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<p style="text-align: right;">Page 42</p> <p>1 properties?</p> <p>2 MR. HAYES: Object to the form. You may</p> <p>3 answer.</p> <p>4 A. I'm going to say no because the title</p> <p>5 claims, valid claims would presume that there would</p> <p>6 be coverage for them, that they were not participants</p> <p>7 in the fraud or there would not be some other</p> <p>8 defenses, which was part of what the litigation is</p> <p>9 about, and also as we mentioned before those</p> <p>10 allocution statements and that pointed to Walsh's</p> <p>11 involvement in the fraud. So I don't -- I don't</p> <p>12 think there was a coverage decision made such that</p> <p>13 would say that you have a valid claim. Were there</p> <p>14 actual title defects or problems with some of the</p> <p>15 title, yes.</p> <p>16 Q. So just you did make -- come to some</p> <p>17 conclusion or the company came to some conclusion on</p> <p>18 title defects?</p> <p>19 A. I think they were aware that some</p> <p>20 documents were unrecorded, yes.</p> <p>21 (Nations-4, Letter dated August 11,</p> <p>22 1997, is received and marked for identification.)</p> <p>23 Q. Before we get to this next document I</p> <p>24 have one other question on that last document. Did</p> <p>25 the company ever advise Walsh that it had concluded</p>	<p style="text-align: right;">Page 44</p> <p>1 we both know that there were unrecorded documents and</p> <p>2 there were communications regarding the fact that</p> <p>3 there were unrecorded documents. So to the extent</p> <p>4 that's an acknowledgement that there's a title issue,</p> <p>5 I think that's done, but to my knowledge there was no</p> <p>6 admission of coverage or liability and that -- in</p> <p>7 those letters.</p> <p>8 Q. Okay. Did you ever notify Walsh</p> <p>9 Securities of any title issues that you uncovered?</p> <p>10 A. That they had not made a claim on you</p> <p>11 mean? Not to my knowledge.</p> <p>12 Q. Moving along to the next document,</p> <p>13 Nations-4, this is a letter dated September 5, 1997</p> <p>14 to Maria Filippelli, Senior Claims Counsel for</p> <p>15 Nations Title and it's from Fred Schlesinger?</p> <p>16 A. I think we're reading different letters.</p> <p>17 Q. I'm sorry. I apologize.</p> <p>18 MR. MEE: Off the record for a second.</p> <p>19 (A discussion takes place off the</p> <p>20 record).</p> <p>21 Q. Going back to Nations-4. It's an August</p> <p>22 11, 1997 letter from Miss Maria Filippelli, Vice</p> <p>23 President, Senior Claims Counsel to Nations and at</p> <p>24 the top it says "Fidelity National Title," so I</p> <p>25 assume at that point Miss Filippelli --</p>
<p style="text-align: right;">Page 43</p> <p>1 that there were title defects on any of those</p> <p>2 properties?</p> <p>3 A. I'm sorry, I don't know what that means.</p> <p>4 I believe they sent out letters in response to some</p> <p>5 of the claims reserving rights with respect to the</p> <p>6 fact that there may not be coverage. So I think they</p> <p>7 were writing letters also to Stern Lavinthal, not to</p> <p>8 Walsh. So I think there was some discussion</p> <p>9 obviously of the issues with the title and how title</p> <p>10 was vested and whether they -- there were mortgages</p> <p>11 on it, and I think there were communications between</p> <p>12 the parties on that, but there was not an admission</p> <p>13 of liability.</p> <p>14 Q. Was there ever an acknowledgement that</p> <p>15 apart from whatever basis you had for denying the</p> <p>16 claim that there were, in fact, title issues with</p> <p>17 these properties?</p> <p>18 A. Can you tell me what "title issues"</p> <p>19 means other than what I've said?</p> <p>20 Q. Title defect. No. What I'm asking you</p> <p>21 is whether or not the company ever acknowledged to</p> <p>22 wash that there were defects in title apart from</p> <p>23 denial of coverage?</p> <p>24 MR. HAYES: Object to the form.</p> <p>25 A. I'm sorry, I don't understand. Again,</p>	<p style="text-align: right;">Page 45</p> <p>1 A. I think the claims department operated</p> <p>2 for both companies out of one department. There was</p> <p>3 only one claims office I believe for both companies</p> <p>4 at the time.</p> <p>5 Q. So how did that -- how did that happen?</p> <p>6 I mean, did Nations have an office that folks from</p> <p>7 Fidelity just moved into or...</p> <p>8 A. I think it might have been -- and I</p> <p>9 don't know this for a fact although I assume that</p> <p>10 Fidelity had its operations and that the Nations</p> <p>11 claims were -- after they were acquired were handled</p> <p>12 out of that site.</p> <p>13 Q. So it's the same --</p> <p>14 A. Two Park -- Two Park was a Fidelity</p> <p>15 office I believe. I don't believe that was a Nations</p> <p>16 office so...</p> <p>17 Q. So did the -- going back to Nations-3,</p> <p>18 did the 106 Apple Street in Tinton Falls, did that</p> <p>19 cease to exist?</p> <p>20 A. No. That was Fidelity's state office in</p> <p>21 New Jersey and as you can see that's underwriting</p> <p>22 counsel. This is a claims office I assume in the New</p> <p>23 York regional claims center.</p> <p>24 Q. So I guess my -- what I'm trying to</p> <p>25 figure out: Did the letterhead just change and</p>

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<p>Page 46</p> <p>1 everybody stayed in their same spot or what happened? 2 A. I think this was a problem. I think 3 Nations continued as an active company but you 4 couldn't always get your support staff to put letters 5 on the correct letterhead sometimes. We had multiple 6 brands and if they don't change the letterhead in the 7 tray or something, so I'm not sure. Is this -- does 8 this specify what company she's writing for? She 9 could have been writing for Fidelity because I think 10 the claim letters came in for Fidelity and Nations. 11 So either she could be really responding to a letter 12 on a Fidelity claim or could have just used the 13 Fidelity letterhead in responding to a Nations claim. 14 I don't know. She doesn't reference the company 15 here.</p> <p>16 (Nations-5, Letter dated September 5, 17 1997, is received and marked for identification.)</p> <p>18 Q. So this is -- what's been marked as 19 Exhibit 5 is the September 5, 1997 letter from Fred 20 Schlesinger at Walsh Securities to Maria Filippelli, 21 Senior Claims Counsel to Nations. In the middle 22 paragraph it states that: "I am enclosing copies of 23 a total of 31 mortgage loan files for which Nations 24 issued closing service letters to Walsh Securities." 25 Do you know whether or not those claims</p>	<p>Page 48</p> <p>1 part of the closing instructions or I am assuming 2 that. 3 Q. So, for example, for "i" it says: 4 "There were no bona fide sales contracts or bona fide 5 sales prices for the prop question properties at 6 issue." 7 Do you know who would have done an 8 investigation on that issue? 9 A. I believe by this or shortly after this 10 the litigation ensued, and I'm sure whatever was 11 done, investigation was done through counsel. You're 12 asking did a claims administrator in September of '97 13 try to investigate this on their own? 14 Q. Was someone with the company charged 15 with investigating these issues in 1997, yeah. 16 A. Well, I don't know about these specific 17 issues. Obviously somebody was charged with handling 18 the claim, but I don't think they investigated these 19 specific issues before the litigation ensued and then 20 it was in the hands of counsel. 21 Q. Who was charged with investigating the 22 claim? 23 A. I think the claims administrator. 24 Initially although Maria Filippelli's name is on some 25 of the earlier letters, I don't see her name. In</p>
<p>Page 47</p> <p>1 files were actually received? 2 A. The loan files? 3 Q. Yes. 4 A. I don't have copies of them but I assume 5 they were. 6 Q. Do you know whether or not they were 7 reviewed by claims counsel? 8 A. I assume they were. 9 Q. When was the last time that they were 10 reviewed by claims counsel? 11 A. I don't know. 12 Q. Further along in the letter it states: 13 "Please be advised that the closing attorneys for 14 these transactions knowingly and fraudulently 15 violated the closing preconditions imposed by Walsh 16 Securities by transmitting the mortgage loan proceeds 17 despite knowing that the following preconditions, 18 among others, were not met," and then it lists four 19 different preconditions. 20 Did you do an investigation or did the 21 company do an investigation as to these 22 preconditions, as to whether or not these 23 preconditions were met? 24 A. I think that we may have inquired what 25 "preconditions" means. I don't know if those were</p>	<p>Page 49</p> <p>1 most of the file I see a Todd Pajonas. 2 MR. HAYES: P-a-j-o-n-a-s, first name 3 Todd, T-o-d-d. 4 A. Seemed to handle it initially and 5 then -- 6 Q. Where is Mr. Pajonas now? 7 A. I don't know. And then I believe 8 sometime during '98 and certainly by December of '98 9 the handling of the claim had been transferred to 10 Arnold Bottalico. 11 Q. Do you know how to spell that one? 12 A. I will try. B-o-t-t-a-l-i-c-o. 13 Q. Where is Mr. Bottalico? 14 A. I believe he lives still in New York. 15 I'm not sure if he's employed at the moment. 16 Q. I had asked you before whether or not 17 there was a claims manual for Nations in '96, '97 and 18 I believe you said that you were not able to find 19 one. Do you have any claims manuals from Nations? 20 A. I have not seen any from Nations. What 21 I said earlier, I think Fidelity had that California 22 Western manual. That's what I was advised in my 23 research. That was not used here. I know later -- 24 certainly when I came to the company in 2002 they 25 didn't have their own claims manual but they gave the</p>

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<p style="text-align: right;">Page 50</p> <p>1 claims administrator a claims guide, an outside 2 publication as a resource, and at what point they 3 started distributing that to claims administrators I 4 don't know. I know it was done by the time I started 5 here in 2002. So if it was done in '97 or 8, I don't 6 know.</p> <p>7 Q. So how were claims processed and 8 investigated if there was no manual? How did the 9 company investigate claims?</p> <p>10 A. Well, I guess to a certain extent 11 there's some logic in it that, you know, you would 12 have to get a -- gather information that you need and 13 look at the insurance or CSL, commitments, whatever, 14 that we had issued and see if it fits within the 15 parameters of coverage. And obviously when we're 16 sued we retain counsel to assist us in that defense 17 and review of claims.</p> <p>18 Q. Outside of litigation though was there a 19 hierarchy? I mean who did folks report to?</p> <p>20 A. Yeah, I understand that at the time 21 there was a claim center manager, and I believe it 22 was Al Yorio at the time this claim first came in. I 23 believe he was the claims center manager in the late 24 '90s, so I think he may have been -- and I think he 25 was copied on some correspondence so I believe he was</p>	<p style="text-align: right;">Page 52</p> <p>1 A. Al Yorio and we had I think a regional 2 claims counsel and general counsel.</p> <p>3 Q. Were those produced? Do you know?</p> <p>4 A. I didn't see the production. I don't 5 know.</p> <p>6 MR. MEE: I will probably make a request 7 for that as well.</p> <p>8 MR. HAYES: And we'll probably refuse to 9 produce that on the basis of privilege and work 10 product but we can talk about that.</p> <p>11 Q. Do you know whether or not as part of 12 the investigation the adjuster was to go out and 13 interview individuals as part of the claims 14 investigation such as Stanley Yacker, Richard Pepsny, 15 Michael Alfieri, Bob Agel?</p> <p>16 A. I know the claims administrator met with 17 Bob Agel. I don't know that he's charged with the 18 duty to meet any of the parties. I don't believe he 19 met with any other parties. And, again, we had 20 counsel pretty early on and it was in litigation, so 21 if there were any meetings with parties other than 22 defendants other than Bob Agel.</p> <p>23 Q. Were there any written notes or 24 memoranda from the adjuster's meeting with Mr. Agel?</p> <p>25 A. There's a handwritten memo and notes --</p>
<p style="text-align: right;">Page 51</p> <p>1 the claims center manager.</p> <p>2 Q. Where is Mr. Yorio now?</p> <p>3 A. I believe he had gone to a title agency 4 in New York, in the city. I'm not sure where he is 5 today.</p> <p>6 Q. So with each claim that came in it would 7 be up to Mr. Yorio to decide how the investigation 8 would be conducted?</p> <p>9 A. Well, the claim would be assigned to a 10 claims administrator, and I think that he would work 11 and, you know, report up to that claims center 12 manager. And if it was a significant claim, which 13 this had a significant number of properties involved, 14 he would probably, you know, not act without some 15 involvement of the claims center manager at least on 16 significant issues.</p> <p>17 Q. How often were they to report up?</p> <p>18 A. I don't know that.</p> <p>19 Q. Were they to fill out any reports?</p> <p>20 A. I don't know back at that date.</p> <p>21 Q. Did they draft any memoranda?</p> <p>22 A. There are some communications between 23 counsel and Mr. Yorio and senior claims.</p> <p>24 Q. You say counsel. You mean outside 25 counsel?</p>	<p style="text-align: right;">Page 53</p> <p>1 or I don't know if it's a memo but notes of the 2 meeting with Bob Agel.</p> <p>3 Q. Do you know when that is dated?</p> <p>4 A. He met with them I think February 6, 5 '98.</p> <p>6 MR. MEE: We will ask for that too.</p> <p>7 Q. Who had the ultimate decision-making 8 responsibility at Nations for determining whether or 9 not a claim was insurable?</p> <p>10 A. Whether a claim was covered? I'm 11 assuming you mean covered.</p> <p>12 Q. Yes, sorry, I am not fluent in the 13 insurance lingo. Yes, covered, thanks.</p> <p>14 A. I am not sure they ever see it, but I 15 would assume that general counsel -- or I'm not sure 16 who is chief claims counsel in the country but 17 obviously there's a top. I'm not sure that -- you 18 know, whether or not they weighed in I don't know, 19 but you start at the bottom, and I'm sure at this 20 level those decisions were made with the claims 21 center manager.</p> <p>22 Q. Who would that have been for Walsh's 23 claims?</p> <p>24 A. Al Yorio I think was the claims center 25 manager.</p>

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<p style="text-align: right;">Page 54</p> <p>1 Q. Once litigation was initiated was there 2 any further investigation done inhouse by the 3 company? 4 A. I think they did do some title searches 5 during the litigation. 6 Q. Is that all? 7 A. I can't say -- I am assuming they may 8 have gone through loan files, but I don't have 9 records of that. 10 Q. Who collected the documents from Coastal 11 Title Agency? 12 A. I think at that meeting -- I don't know 13 if they picked them up. Todd Pajonas, I don't think 14 he physically took the files. Maybe Kevin Cairns 15 collected files or Maureen Crowley was agency rep or 16 manager and she may have picked them up. 17 Q. Was there an audit conducted of the 18 Coastal files? 19 MR. HAYES: Object to the form. You can 20 answer. 21 A. Again, I don't know what you mean -- you 22 mean an audit? What does "audit" mean? Prior -- did 23 they audit Coastal regularly? Did they audit the 24 files once they got them? You mean just review them? 25 Q. Let me back up. Does the company ever</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. When were those conducted? 2 A. I think -- they're after the date that 3 these claims came in. I think they were in early 4 2000 but I'm not sure. 5 Q. Who was the point person at Nations for 6 any questions that Coastal may have had? 7 A. I don't know if Nations -- you know, 8 prior to the acquisition in April of '96 I don't know 9 who Nations people were. After April first, '96, I 10 believe it was handled out of the Fidelity state 11 office and Kevin Cairns would have been the person 12 initially while he was employed there. 13 Q. When the company terminated Coastal 14 Title did it -- did the company go to Coastal's 15 offices and review files to collect documents, to 16 conduct an audit? 17 A. Yeah -- yes, I'm sure they went and they 18 accounted for whatever policies and do the final 19 remittance and, you know, take -- I think they take 20 whatever evidence that they're writing for the 21 company out of there since they're no longer going to 22 be writing for the company. 23 Q. Is there memoranda to that effect? 24 A. I think there's a memo and it may even 25 be in the termination notice, you know, that we're</p>
<p style="text-align: right;">Page 55</p> <p>1 audit its agents? 2 A. Yes. 3 Q. And how so? 4 A. I was told that they had three types of 5 audits. Corporate audit, I guess, which was done at 6 the home office, but I'm not sure how often that 7 occurred or really what that entailed. They did an 8 agency-type review audit and looked at their 9 licensing and policy issuing and remitting and 10 whether -- how many employees, what is their source 11 of business. Those types of things I was told were 12 done every other year at that point. There can be an 13 underwriting audit and I'm told that underwriting 14 counsel would pick a couple of agents a year and then 15 sample a few files and review them for the 16 underwriting content and, you know, whether things 17 were being properly set up. 18 Q. So how often did the company audit 19 Coastal Title? 20 A. That I don't know. I can't tell from 21 the file. 22 Q. Were there any audit reports from their 23 audits of Coastal? 24 A. In the agency file there were a couple 25 of financial-type audits.</p>	<p style="text-align: right;">Page 57</p> <p>1 going to come to the office and collect things. So I 2 don't know if there's anything -- there's probably a 3 final accounting on policies that might be in the 4 agency file. 5 Q. Was there a memo on Nations 6 investigation of Coastal after these claims were made 7 by Walsh Securities? 8 A. I'm sorry. Was there a memo -- say that 9 again. 10 (The pending question is read by the 11 court reporter.) 12 A. I'm sure there were internal memos 13 regarding the nature of the claim and the 14 investigation, like I said, between the claims 15 administrator and claims center manager. That type 16 of thing. 17 Q. Did you see those in your review of the 18 documents? 19 A. Yes. 20 Q. So they do exist. You said there may 21 be. 22 A. There are some memos regarding this 23 claim to higher-up people in the company including 24 the claims center manager. 25 Q. When was the first time that -- strike</p>

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<p style="text-align: right;">Page 58</p> <p>1 that. In the company's investigation of -- or I 2 shouldn't say investigation. Strike that. 3 In the company's audit of Coastal's 4 files, whenever the company looked at Coastal's 5 files, were there closing service letters and title 6 policies in those files? 7 MR. HAYES: Object to the form. You can 8 answer. 9 A. I don't have a wide sample of the files 10 in the office. In the files I looked at, you're 11 asking me were there policies or closing service 12 letters? I think there probably were some policy -- 13 a few. I don't know specifically but I believe there 14 were some closing service letters and some policies 15 or commitments certainly. 16 Q. And the company made a request to 17 Coastal to obtain its files relating to this 18 litigation? 19 A. Yes. 20 Q. Is that the only place that the company 21 found policies and closing service letters? I mean, 22 did the company have copies of those itself? 23 A. The company -- I don't know any center 24 that collected policies per se although they sent 25 with the remittance apparently -- in most instances</p>	<p style="text-align: right;">Page 60</p> <p>1 A. And I'm not sure if they went directly 2 to this Tinton Falls address. Fidelity in New Jersey 3 is -- had a close relationship with the Fidelity 4 offices in Pennsylvania. They had the same regional 5 manager. So whether the accounting was sent directly 6 into Pennsylvania where Roberta DeFelice is today or 7 whether it went into Tinton Falls, I'm not sure. 8 Q. So if Nations wanted to make a request 9 for like the policies that were issued in certain -- 10 on certain properties it could look inhouse for those 11 policies? 12 A. The most success I have had is with 13 Roberta and having her go over the numbers on the 14 chart. I couldn't find a national source for that. 15 Q. If an insured had called you up and 16 said: I don't have a copy of my policy, can I get a 17 copy of my policy, would Nations have been able to do 18 that? 19 A. I don't know that they could. If they 20 had the policy number maybe they could do what I'm 21 doing today and actually that was true of 22 Commonwealth as well. They had to know the policy 23 number. 24 Q. So is it like a bar to whether or not 25 there's coverage if you have your policy number or</p>
<p style="text-align: right;">Page 59</p> <p>1 they would send a copy of the policy. So when I 2 requested the remittance information and I asked 3 them: Do you have copies of the policies? They said 4 we have, you know, some, and they were able to give 5 me copies that they had. And, again, it was only a 6 small percentage of that number on the chart but they 7 did have some policies that were forwarded to the 8 office with the remittances. 9 Q. So I think you are honing in on what I'm 10 asking. Was there like a National Processing Center 11 for Nations and Fidelity like there was for 12 Commonwealth? 13 A. No, I don't know at that time that there 14 was any national office but I think they were -- 15 where they were remitting was probably more to a 16 state agency department, and they were submitting 17 copies of maybe those policies with remittances to 18 the state office. 19 Q. So there was no -- there's no like 20 central clearing house? 21 A. Not like an NPC like Commonwealth had, 22 not at that time. 23 Q. Where was the state office that Coastal 24 would have been sending its remittances and policies 25 to?</p>	<p style="text-align: right;">Page 61</p> <p>1 don't have your policy number? 2 A. Obviously we have to have a copy of a 3 policy to assess what the coverage is. So I can say 4 in the past we have some insureds that could not 5 produce a policy, and I am not saying for Nations but 6 for some companies and you couldn't honor a claim 7 until we could -- unless they could find a policy or 8 some evidence of what we agreed to insure. 9 Q. Would proof of remittance be -- 10 A. It wouldn't give you the terms of the 11 policy. 12 Q. So I'm just curious, if I had my 13 homeowner's policy in my house and my house burned 14 down and I couldn't find a copy of my homeowner's 15 policy because my house burned down along with 16 everything in it and I called up my insurance company 17 and I said: I have a homeowner's policy with you but 18 I have no idea what the policy number is -- 19 A. It's not homeowners, first of all, but 20 if you lost your policy we might say: Well, do you 21 know where you got your title insurance? From an 22 agent or an office? Because the agent may index the 23 properties they have insured by property address or 24 by the name of someone so you could check with your 25 agent, you could check with the attorney that</p>

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<p style="text-align: right;">Page 62</p> <p>1 represented you at the closing and see if he has a 2 copy of the policy. 3 Q. Does the company have any way to link up 4 the person's name with the policy or the property 5 with the policy? 6 A. With computerization and what they have 7 today maybe they could do it, but they could not do 8 it back then. 9 Q. How about with the closing service 10 letter? 11 A. No. Less. 12 Q. So if an insured -- let's not use the 13 house example, but if like an insured's company 14 burned down to the ground and all of their closing 15 service letters burned down with it, is that a bar to 16 whether there's coverage under the closing service 17 letter? 18 A. You can't prove you have a contract. 19 Q. So the company doesn't retain a copy of 20 the policy or the closing service letter? 21 A. At that time the company may not have 22 received the policy or if you're talking about a 23 commitment, a closing service letter, certainly they 24 might not have received that if a policy had not been 25 issued. If we knew what the policy number is we</p>	<p style="text-align: right;">Page 64</p> <p>1 the claim I guess -- I think if the combined suit 2 alleges a loss in excess of ten million, I think that 3 might be the threshold. 4 Q. Did the company put its carrier on 5 notice? 6 A. There are carriers on notice, yes. 7 Q. What was the name of Nations carrier? 8 A. You know, I would be guessing. I think 9 there are a few names there. I'm not sure which is 10 which. 11 Q. Are they tiered? Is that what it is? 12 A. I'm sorry? 13 Q. Is it tiered coverage? In other words, 14 when you say there may be multiple insurance 15 companies -- 16 A. No. I mean we have different companies 17 involved here that had their own separate 18 underwriters so I'm not sure who is Commonwealth, who 19 is Fidelity, who is Nations, but I believe they each 20 had their own underwriters that were put on notice. 21 Q. Can you recall the names of those? 22 A. I know Lloyd's is for one company. I 23 don't know if there's CNA or AIG. I haven't really 24 examined the policies. 25 Q. Do you know whether or not AIG was</p>
<p style="text-align: right;">Page 63</p> <p>1 might be able to track it. I don't know if they 2 could have searched it in some other fashion at that 3 time. I know Commonwealth we couldn't, and I'm sorry 4 to use that example, but that speaks for my history, 5 and I think if you knew the commitment number, 6 Roberta could pull something by commitment number. 7 And, again, I'm saying what is available to her today 8 and I'm assuming that was available back in '96. 9 Q. Even though the -- 10 A. '97. 11 Q. -- the closing service letter identifies 12 the name of the insured and the property and the 13 attorney there is no other way to find it unless the 14 insured has a copy of the closing service letter. Is 15 that what you're saying? 16 A. I don't think anyone tracked by closing 17 service letter alone. If we received a remittance or 18 a copy of a closing service letter it would come in 19 with the policy. 20 Q. Okay. Does the company have insurance 21 coverage on any of the claims at issue in this case? 22 A. Again, we have underwriter's for 23 catastrophic losses. 24 Q. Is this considered a catastrophic loss? 25 A. Or exposure. You put them on notice of</p>	<p style="text-align: right;">Page 65</p> <p>1 placed on notice? 2 A. All the underwriters for the companies 3 were placed on notice. 4 Q. You had mentioned AIG and then you said 5 I think, I'm not sure -- 6 A. I'm not sure of the names. Lloyd's I'm 7 sure is one of them. I'm not sure of the names of 8 the others. I've seen I think paperwork with AIG's 9 name on it, so I'm not sure if they're one of them 10 but I know each of the companies have given notice. 11 Q. How many are there, do you think? 12 A. How many are there? 13 Q. How many insurance carriers are there? 14 A. I think there are three separate ones 15 for -- each company had their own. 16 Q. And do you have a copy of that notice 17 letter to -- 18 A. I believe they're in the file. 19 MR. MEE: We will make a request for 20 that. 21 A. Or certainly some communications. 22 Q. And has the carrier paid anything on 23 this litigation? 24 A. Not to my knowledge. 25 Q. Any attorneys' fees or anything like</p>

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<p style="text-align: right;">Page 66</p> <p>1 that?</p> <p>2 A. No.</p> <p>3 Q. Has the carrier denied coverage?</p> <p>4 A. I don't believe so.</p> <p>5 Q. Did Nations or did the company have an 6 insurance policy covering the actions of its agents 7 separate and apart from the -- like I don't know if 8 there's a separate provision or anything like that?</p> <p>9 A. I am not really familiar with the policy 10 coverage.</p> <p>11 MR. MEE: Okay. I think we will make a 12 request for the policies as well. Off the record.</p> <p>13 (A recess takes place.)</p> <p>14 Q. I believe as part of your testimony for 15 Commonwealth you stated that this was considered a 16 major claims case. Does Nations have that name for 17 this case as well?</p> <p>18 A. Keep in mind that Nations has merged 19 into Fidelity, but, yes, it's designated as a major 20 claim.</p> <p>21 Q. Is there a major claims division within 22 Fidelity?</p> <p>23 A. Yes.</p> <p>24 Q. Is that the division that's handling 25 this case?</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. Is there any other major claims counsel 2 working on this case?</p> <p>3 A. Vincent Sharkey is assigned the case.</p> <p>4 It's not my case.</p> <p>5 Q. I'm sorry. Just to understand, like, 6 the corporate structure, are you parallel to him, is 7 he above you or below you? How does that work?</p> <p>8 A. We're now -- I don't report to him. We 9 report to the same boss. I have my own claims load 10 so I don't report to him. We're more parallel, if 11 parallel is the right word.</p> <p>12 Q. So this case is actually his case?</p> <p>13 A. Correct.</p> <p>14 Q. So how is it that you're here as the 15 30(b)6 witness?</p> <p>16 A. One, because of my role at Commonwealth 17 years ago and my familiarity somewhat with the 18 processes that went on back then. Until I guess -- I 19 don't know if it's a year ago I actually -- when the 20 claims center first closed in 2009 I worked for Mr. 21 Sharkey at that point for a year. So I did work with 22 him a little bit, you know, on this claim and his 23 other claims. But I think I'm the witness more 24 because of my role at the inception at Commonwealth.</p> <p>25 Q. When did Mr. Sharkey come on to</p>
<p style="text-align: right;">Page 67</p> <p>1 A. Yes.</p> <p>2 Q. And who is the head of the major claims 3 division?</p> <p>4 A. That's a good question.</p> <p>5 Q. I have a better question.</p> <p>6 A. Okay.</p> <p>7 Q. Who do you report to?</p> <p>8 A. I report to David Eizenman in New York.</p> <p>9 Q. Who is --</p> <p>10 A. E-i-z-e-n-m-a-n. And I have to say they 11 changed our titles about a week ago and I don't 12 recall what his title is, but he is a supervisor of 13 five major claims counsel in the northeast.</p> <p>14 Q. And what's your title? Did your title 15 change?</p> <p>16 A. Yes.</p> <p>17 Q. What was your title and what is it now?</p> <p>18 A. It was associate major claims counsel 19 and they have done away with "associate." It's not a 20 promotion but I'm major claims counsel.</p> <p>21 Q. Structurally has anything changed?</p> <p>22 A. Well, Mr. Eizenman is new to the company 23 and so his supervisory role is a little bit 24 different. And I think he may report directly to 25 general counsel for the parent company.</p>	<p style="text-align: right;">Page 69</p> <p>1 Fidelity?</p> <p>2 A. It was after 2005. I'm not sure if it 3 was 2006 or 7. I don't recall what year.</p> <p>4 Q. So do you -- you report -- on this case 5 does he report to Mr. Eizenman?</p> <p>6 A. Correct.</p> <p>7 Q. And you report to Mr. Sharkey on how the 8 deposition went?</p> <p>9 A. He will be aware of, you know, what 10 happened, but I don't technically report to him under 11 the company structure.</p> <p>12 Q. All right. Right. Did he once have all 13 the files and then give them to you?</p> <p>14 A. We're in the same office so -- and we 15 actually have all the files in an office between the 16 two of us so we can each access them.</p> <p>17 Q. Mutual assured destruction. And why is 18 it that Nations/Fidelity defines this as a major 19 claims case?</p> <p>20 A. Because the exposure was over a million 21 or the suit alleged damage is over a million.</p> <p>22 Q. Is that written somewhere, how to define 23 a major claims case?</p> <p>24 A. I don't know if there was a memo to that 25 effect somewhere, and in the last week or so we also</p>

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<p style="text-align: right;">Page 70</p> <p>1 received an e-mail from Mr. Eizenman saying that he 2 thought we were only going to get claims with alleged 3 damages over 2.5 million in the future in the major 4 claims department, but we haven't seen anything from 5 home office to that effect. So I don't know, some of 6 it is just -- but there may be a memo about the one 7 million. I'm just not sure where it is.</p> <p>8 Q. If this case -- if the major claims 9 counsel decides that it's -- that it's the \$2.5 10 million exposure will this case get transferred to 11 another --</p> <p>12 A. No, no.</p> <p>13 Q. How much has Nations or Fidelity 14 determined the exposure to be in this case?</p> <p>15 A. Are you talking about the alleged 16 damages?</p> <p>17 Q. Well, do you have a potential exposure 18 amount of this case?</p> <p>19 A. Only something, you know, developed 20 through counsel. I mean our risk assessment you're 21 asking me?</p> <p>22 Q. Is Nations required to put together a 23 risk assessment?</p> <p>24 A. I mean we're always in the claims 25 department trying to assess what our risk was because</p>	<p style="text-align: right;">Page 72</p> <p>1 of investigating the Nations -- I'm sorry -- I should 2 say Walsh Securities claims involving Nations?</p> <p>3 A. Immediately prior to him I believe Ken 4 Aran may have had it and I'm not sure how long Ken 5 had it.</p> <p>6 Q. Where is Mr. Aran now?</p> <p>7 A. He's in our New York office.</p> <p>8 Q. And prior to Mr. Aran?</p> <p>9 A. Arnold Bottalico I think had it.</p> <p>10 Q. And prior to Mr. Bottalico?</p> <p>11 A. Todd Pajonas.</p> <p>12 Q. Anyone prior to Mr. Pajonas?</p> <p>13 A. I mean I see Maria Filippelli's name on 14 some of these, but I don't see much of her name in 15 the files or any investigation.</p> <p>16 Q. Is there any reason why it was 17 transferred from Mr. Aran to --</p> <p>18 A. I think because it was New Jersey. When 19 they hired Mr. Sharkey they transferred some of the 20 New Jersey matters over to him since he's a New 21 Jersey attorney, or anyway -- voluntarily gave up his 22 license so when I say attorney --</p> <p>23 Q. Of course. Like corporate counsel. I 24 understand. Which division within -- what is the 25 name of the division within Nations or Fidelity that</p>
<p style="text-align: right;">Page 71</p> <p>1 home office doesn't want to be surprised.</p> <p>2 Q. So has there been a risk assessment on 3 this case?</p> <p>4 A. Those are formal words, risk assessment, 5 but certainly we've analyzed the claim and --</p> <p>6 Q. Was that done back in '96, '97 -- '96 to 7 like 2000, was there a risk assessment back then?</p> <p>8 A. I'm sure it was pretty hard to do 9 initially, but I'm sure there was some type of 10 evaluation even if it was with less information. 11 Over time it has probably evolved.</p> <p>12 Q. Did you review any memoranda to that 13 effect, any kind of -- I mean, did you review any 14 risk assessment memoranda?</p> <p>15 A. Yes.</p> <p>16 Q. Were those documents produced?</p> <p>17 A. It was prepared by counsel.</p> <p>18 Q. Anything prepared inhouse?</p> <p>19 A. I don't know that I've reviewed anything 20 recently that was inhouse, and I'm not sure anything 21 real old went to actual numbers.</p> <p>22 Q. The risk assessment prepared by counsel, 23 when was that prepared?</p> <p>24 A. I think within the last nine months.</p> <p>25 Q. Prior to Mr. Sharkey who was in charge</p>	<p style="text-align: right;">Page 73</p> <p>1 collected the premiums and payments or remittances 2 from policies and fees from closing service letters?</p> <p>3 A. I'm not sure there's a title but 4 obviously there's a state agency manager, a state 5 agency operation that would have been in charge of 6 supervising the agents and evaluated based I guess on 7 their agency's remittances, that type of thing. So 8 it would have gone I believe to that state office and 9 again whether accounting, whether actually some of 10 that went directly to Pennsylvania I don't know, but 11 it would have been attributed to the New Jersey 12 office.</p> <p>13 Q. Would that have been Miss Filippelli?</p> <p>14 A. No, she was in the claims department. 15 Kevin Cairns, then later Chris Marra was in New 16 Jersey production operation.</p> <p>17 Q. As a title insurance company did -- what 18 type of services did the company provide prior to 19 closing? It's a very broad question I understand, 20 but what services did the title company, title 21 insurance company provide during closing 22 transactions?</p> <p>23 MR. HAYES: These transactions or just 24 general?</p> <p>25 Q. Generally, I'm sorry.</p>

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<p>1 A. Again, you're talking in a situation 2 where we have an agent?</p> <p>3 Q. Yes.</p> <p>4 A. So the title company is not really 5 providing any services other than some type of 6 support for the agent. If the agent had an 7 underwriting question they could contact underwriting 8 counsel for assistance, but the company is not 9 preparing documents or doing search work or anything 10 related to a specific closing.</p> <p>11 Q. And if the agent had a question, was 12 there an intake form that someone would fill out for 13 the company?</p> <p>14 A. I don't believe so. I believe they 15 would just -- if they had a question they would just 16 get on the phone or fax something up to the 17 underwriting counsel.</p> <p>18 Q. So it was fairly informal?</p> <p>19 A. Yes.</p> <p>20 Q. What type of products or services would 21 the agent be able to provide or sell?</p> <p>22 A. It's specified in their agency 23 agreement. They have the right to issue commitments 24 and write title insurance. They can issue a closing 25 service letter in connection with the commitment.</p>	<p>Page 74</p> <p>1 search work, was that part of the agency agreement 2 that would be written down anywhere?</p> <p>3 A. Well, they wouldn't -- they would be 4 doing that for the purpose of issuing a title 5 insurance commitment and they're writing the 6 commitment on behalf of the company, but it seems a 7 little difficult to separate them, but if they 8 committed some error in the search, I mean I think 9 they would be responsible for that independently.</p> <p>10 Q. I know this question --</p> <p>11 A. Although to the company, again, the 12 search is not usually distributed to -- is not done 13 for the benefit of a third party.</p> <p>14 Q. I know we have asked you this in your 15 capacity as the Commonwealth 30(b)6 but what is the 16 purpose of an -- or what is a marked-up title 17 commitment?</p> <p>18 A. What is the purpose?</p> <p>19 Q. What is it? Let's start with: What is 20 it?</p> <p>21 A. Well, someone at closing -- I am not 22 saying it's authorized by the company, I mean, but 23 generally a marked-up commitment that people look at 24 is going to be a commitment that's been updated in 25 handwriting with what matters are to be insured</p>
<p>Page 75</p> <p>1 Their closing function, if they have a closing 2 function, or a search work unrelated to title 3 commitment or policy, that would be their own 4 business and not covered by the agency agreement.</p> <p>5 Q. Anything else covered by the agency 6 agreement?</p> <p>7 A. I would have to read the language in the 8 agreement, but obviously that's their primary 9 function is to write insurance. They have the 10 ability to remove exceptions based on, you know, 11 proofs that they may have required in issuing a 12 policy.</p> <p>13 Q. And would the company's agent hire 14 someone to do the search work or would the agent do 15 the search work?</p> <p>16 A. That can vary from agent to agent. Some 17 agents employ staff searchers. I think the majority 18 probably didn't. They probably would call an 19 independent searcher in the county where the property 20 was located.</p> <p>21 Q. Do you know whether Coastal Title Agency 22 hired someone to do the search work or whether it did 23 it itself?</p> <p>24 A. No, I don't recall.</p> <p>25 Q. If the title agency was doing its own</p>	<p>Page 77</p> <p>1 following closing, which matters are to be omitted 2 from the final policy, so you will have somebody go 3 down the requirements and either write "omit" if they 4 have all been satisfied and the exceptions, still 5 write which ones will stay in. If there's easements 6 affecting the property which ones may come off. For 7 instance, a mortgage that's being paid off. So they 8 will mark it to reflect the way they want title to be 9 insured.</p> <p>10 Q. What's the point of marking it up?</p> <p>11 A. If the title company is marking it up it 12 may be that the lender has asked for that and 13 sometimes in a direct operation the title company 14 will go and mark up the binder for the lender. The 15 parties want somebody from the title company there 16 that can bind the company.</p> <p>17 Q. Is that the -- are you referring to the 18 north/south distinction when you say the title 19 company would mark it up? Is that what you're 20 referring to?</p> <p>21 A. I guess -- I don't think this applies to 22 an attorney marking it up, although to the extent it 23 affects priority it could be covered in a different 24 means, maybe by a closing service letter or 25 something.</p>

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<p style="text-align: right;">Page 78</p> <p>1 Q. Who puts the actual document together, 2 the commitment, who drafts that?</p> <p>3 A. In this case the title agent would have 4 done that.</p> <p>5 Q. How do they do that?</p> <p>6 A. The title agent would request searches 7 from the county records, upper court searches, tax 8 and assessment searches from the municipality and 9 they will analyze that and draft a commitment, what 10 things need to be satisfied, requirements for the 11 recording of documents, you know, what the county 12 search showed, different easements or restrictions 13 that affect the property would be set up in Schedule 14 B so that's how --</p> <p>15 Q. So they get a bunch of documents from 16 whoever is doing the search or maybe they're doing 17 the search, and then they use those documents to 18 determine what it looks like?</p> <p>19 A. What we're willing to insure, what 20 things have to be addressed before we will insure. 21 They set up the requirements.</p> <p>22 Q. Is that the same for the closing service letter?</p> <p>23 MR. HAYES: Object to the form.</p> <p>24 Q. Let me rephrase. You testified that</p>	<p style="text-align: right;">Page 80</p> <p>1 A. I think we're bound to the insured by 2 the terms of the contract, whether that's the 3 commitment and closing service letter or the policy. 4 I mean, we would have to analyze what our liability 5 to the insured. I'm not sure what misinformation is 6 in the commitment that you're referring to, whether 7 it's going to cause a loss covered by the contract.</p> <p>8 Q. How about with regard to the closing 9 service letter, if the -- strike that.</p> <p>10 Does the company believe that a closing 11 should occur if the lender's closing instructions are 12 not followed?</p> <p>13 A. I don't know what its belief is. 14 Obviously we have certain coverages with respect to 15 the closing instructions and only certain issues are 16 going to be covered by that closing protection 17 letter. Are you saying are we okay with agents 18 disregarding closing instructions assuming they get 19 them? I mean, no, I mean, but I don't know that 20 that's a basis for liability and I don't know the 21 surrounding facts. I mean I would have to understand 22 each case I think.</p> <p>23 Q. Is there -- who defines the terms under 24 the closing protection letter?</p> <p>25 MR. HAYES: Object to the form.</p>
<p style="text-align: right;">Page 79</p> <p>1 it's the agent that puts together the commitment. Is 2 that the same for the closing service letter?</p> <p>3 A. Are you asking: Does the agent issue 4 the closing service letter?</p> <p>5 Q. Who drafts it?</p> <p>6 A. The agent. I mean not the actual text 7 but who it's addressed to and what transaction is 8 covered. Not obviously the actual coverage, which is 9 a filed form.</p> <p>10 Q. And then who does that go to?</p> <p>11 A. It goes out with the commitment and to 12 whoever they're sending -- I guess if the closing 13 attorney requested the package it may go to the 14 closing attorney who will forward it to the lender. 15 If they ask them to send it directly to the lender, 16 they may send a copy of the commitment and the 17 closing service letters directly to the lender.</p> <p>18 Q. Do you know if Coastal sent it to the 19 closing attorneys in this case?</p> <p>20 A. I'm not sure. I believe they did.</p> <p>21 Q. If the title agent knew that there was 22 misinformation contained in the commitment would that 23 trigger coverage by the title company?</p> <p>24 MR. KOTT: Object to the form.</p> <p>25 MR. HAYES: Object.</p>	<p style="text-align: right;">Page 81</p> <p>1 MR. KOTT: I think I do too.</p> <p>2 Q. Who defines the terms? There are 3 certain terms listed in the closing protection 4 letter. Does any -- I mean, are they defined within 5 the closing protection letter?</p> <p>6 A. I don't think there's a definition 7 section in the closing service letter, you know, so 8 I'm going to leave it at that. The closing service 9 letter is -- I guess I'll leave it at that.</p> <p>10 Q. Did Nations ever permit its agents to 11 issue commitments and closing protection letters 12 with -- on the same property with separate 13 designations using the A in parenthesis?</p> <p>14 A. Did they allow them? Is that what your 15 question is?</p> <p>16 Q. Yes.</p> <p>17 A. I don't have any information on whether 18 they had underwriting directions with respect to that 19 at that time and again I'm referring to Nations.</p> <p>20 Q. With regard to the title policy is there 21 a standard fee associated with each policy?</p> <p>22 A. No.</p> <p>23 Q. Or premium, I should say?</p> <p>24 A. The premium is based on filed rates. 25 There's filings. You have to calculate the rate</p>

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<p style="text-align: right;">Page 82</p> <p>1 based on the amount of insurance.</p> <p>2 Q. Has Nations ever experienced a higher</p> <p>3 loss with regard to sub prime loans?</p> <p>4 A. I am not in a position to -- I don't</p> <p>5 have numbers on that.</p> <p>6 Q. The company has never done an evaluation</p> <p>7 as to whether or not title policies issued on sub</p> <p>8 prime loans have a higher loss experience than on</p> <p>9 standard or -- standard loans?</p> <p>10 A. I am not aware of it.</p> <p>11 Q. Do you know if there are post-closing</p> <p>12 searches conducted by the title agent?</p> <p>13 A. Yes, normally there would be to pick up</p> <p>14 the recording information for the documents that</p> <p>15 we're going to list on the policy as the insured</p> <p>16 mortgage or the vesting deed.</p> <p>17 Q. How do they know when to do the</p> <p>18 post-closing search?</p> <p>19 A. They kind of guess. They have an idea</p> <p>20 of how far behind the county records are and if they</p> <p>21 know that they're backlogged two months they might</p> <p>22 send it in two months from when they think the</p> <p>23 closing took place, and normally they will know the</p> <p>24 closing is taking place if the attorney orders a</p> <p>25 rundown or if they send, you know, a post-closing</p>	<p style="text-align: right;">Page 84</p> <p>1 you have less overhead. So I don't know. I'm not</p> <p>2 sure why different companies have different</p> <p>3 structures.</p> <p>4 Q. What was the --</p> <p>5 A. Most of them have a lot of agents</p> <p>6 though. I think most of them are primarily agent</p> <p>7 based. A couple have a few direct operations.</p> <p>8 Q. When you say you take less premium, why</p> <p>9 do you take less premium?</p> <p>10 A. If you're a direct operation you receive</p> <p>11 the whole premium. If you're working through an</p> <p>12 agency network then the agent is only remitting a</p> <p>13 small proportion of the premium.</p> <p>14 Q. Why are they only remitting a small</p> <p>15 portion of the premium?</p> <p>16 A. I guess that's what the market bears.</p> <p>17 If they have the negotiating strength they get a</p> <p>18 better split.</p> <p>19 Q. Today what is the split generally, the</p> <p>20 market split?</p> <p>21 A. I don't see it today so I don't know if</p> <p>22 it's going in one direction or another, but I</p> <p>23 wouldn't be surprised, anywhere between 80/20, 85/15</p> <p>24 I would think it would be.</p> <p>25 Q. Why is it so high? You don't have to</p>
<p style="text-align: right;">Page 83</p> <p>1 package with affidavits of title, the premium, things</p> <p>2 like that, then they will know a closing took place.</p> <p>3 Q. Why did Nations use agents, title agents</p> <p>4 as opposed to issuing closing service letters and</p> <p>5 commitments by itself?</p> <p>6 A. I don't know -- we're talking about</p> <p>7 Nations, not pre-acquisition, I guess you're talking</p> <p>8 about.</p> <p>9 Q. In the 1996 to '97 time frame why were</p> <p>10 they using agents?</p> <p>11 A. I don't know. That's how they were</p> <p>12 structured. I don't know. Maybe they didn't want to</p> <p>13 set up direct operations, but I don't know the reason</p> <p>14 that they set it up that way.</p> <p>15 Q. Fidelity uses title agents as well?</p> <p>16 A. Fidelity uses mostly agents. They have</p> <p>17 at least one direct operation I think.</p> <p>18 Q. So why did that company use title</p> <p>19 agents?</p> <p>20 A. Why did Fidelity use title agents? I'm</p> <p>21 assuming they like that structure. Maybe they don't</p> <p>22 want the overhead of direct employees, but I don't</p> <p>23 have the financial analysis. I'm assuming there's</p> <p>24 some financial benefit to having agents maybe as</p> <p>25 opposed to branches, but you take in less premium but</p>	<p style="text-align: right;">Page 85</p> <p>1 answer that. That's okay.</p> <p>2 When the company decides to use an agent</p> <p>3 and -- does it conduct an investigation of the</p> <p>4 agent's company?</p> <p>5 A. If it has an existing -- I'm sure they</p> <p>6 do some investigation. I can't speak specifically</p> <p>7 for '96. '96 the agent Coastal was an existing agent</p> <p>8 that came over -- you know, through the acquisition</p> <p>9 but normally they do credit checks I think on the</p> <p>10 principals. They might do a criminal check. If</p> <p>11 they're an operating agency there's probably some</p> <p>12 word of mouth in the industry. If they have a good</p> <p>13 reputation, a bad reputation. Obviously they have to</p> <p>14 be licensed. So they're going to look at certain</p> <p>15 criteria, how much work -- if they're an existing</p> <p>16 agent how much work can they generate? Are they</p> <p>17 worth having as an agent?</p> <p>18 Q. Were there monthly or annual checks or</p> <p>19 inquiries as to how much the company was receiving</p> <p>20 from its agents?</p> <p>21 A. Well, I'm sure -- there are tallies for</p> <p>22 how much premium is remitted by an agent, and I don't</p> <p>23 know if it's quarterly but certainly there are yearly</p> <p>24 statistics.</p> <p>25 Q. Is there like a quota for maintaining an</p>

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<p style="text-align: right;">Page 86</p> <p>1 agent, a premium quota?</p> <p>2 A. Again, I'm sure it's changed over the</p> <p>3 years. There may be. It may be more so today than</p> <p>4 in the past.</p> <p>5 Q. Did you ever see any documents</p> <p>6 referencing how much Coastal was remitting to Nations</p> <p>7 in '96 or '97?</p> <p>8 A. I don't know if I saw Nations. I saw</p> <p>9 Fidelity.</p> <p>10 Q. How much was it remitting to Fidelity in</p> <p>11 '96 or '97?</p> <p>12 A. A little over 100,000.</p> <p>13 Q. Annually?</p> <p>14 A. Yes.</p> <p>15 Q. I'm handing you what's already been</p> <p>16 marked as Coastal-6. It looks like the first portion</p> <p>17 of this document -- it's already been marked but this</p> <p>18 document starts at page FY 013000 through FY 013019.</p> <p>19 It appears to be Fidelity's agency agreement with</p> <p>20 Coastal Title. And then at 13008 is TRW Agency</p> <p>21 agreement with Coastal and then at 13017 it appears</p> <p>22 to be Nations Title Agency agreement with Coastal</p> <p>23 Title.</p> <p>24 MR. HAYES: Object to that last</p> <p>25 characterization. I think 13017 indicates it's an</p>	<p style="text-align: right;">Page 88</p> <p>1 1996 and 1997?</p> <p>2 A. Yes, I believe it was.</p> <p>3 Q. Give me one second, please.</p> <p>4 (A discussion takes place off the</p> <p>5 record).</p> <p>6 Q. Down at the bottom of 13009, Report of</p> <p>7 Premiums, it states: "Agent shall mail to principal</p> <p>8 on or before the 15th day of each month a report and</p> <p>9 form prescribed or approved by principal of all title</p> <p>10 insurance policies and endorsements issued during the</p> <p>11 preceding calendar month. Said report shall be</p> <p>12 accompanied by agent's remittance to principal of the</p> <p>13 portion of the premiums to which principal is</p> <p>14 entitled."</p> <p>15 Do you know whether or not that was done</p> <p>16 by Coastal Title Agency?</p> <p>17 A. I don't.</p> <p>18 Q. Would this be a way of tracking which</p> <p>19 policies and endorsements that were issued to Walsh</p> <p>20 Securities in that time frame?</p> <p>21 A. If there's a report that exists that</p> <p>22 reflects which policy numbers issued. I don't know</p> <p>23 if this is a report that's just going to give you</p> <p>24 policy numbers and remittance, whether it's going to</p> <p>25 give you copies or say who the insured is or anything</p>
<p style="text-align: right;">Page 87</p> <p>1 assignment.</p> <p>2 MR. MEE: Thank you, that's correct.</p> <p>3 It's an assignment.</p> <p>4 Q. Well, you can -- maybe we can clear this</p> <p>5 up. At 13008 it says TRW Title Insurance up at the</p> <p>6 top. Do you know who or what TRW Title Insurance</p> <p>7 was?</p> <p>8 A. I'm trying to look and think of the</p> <p>9 company history, but I believe TRW was the</p> <p>10 predecessor -- either it was a name change to Nations</p> <p>11 or it was a company acquired by Nations.</p> <p>12 Q. Okay. And so going back to 13017, the</p> <p>13 Assignment, is that Nations assuming the agreement</p> <p>14 between TRW and Coastal?</p> <p>15 A. 13017?</p> <p>16 Q. Yes.</p> <p>17 A. No, it looks like an assignment from</p> <p>18 Nations of the agency agreement to Fidelity, isn't</p> <p>19 it?</p> <p>20 Q. You're right actually.</p> <p>21 MR. MEE: Off the record for a second.</p> <p>22 (A discussion takes place off the</p> <p>23 record).</p> <p>24 Q. So at 13008, was this the operating</p> <p>25 agency agreement between Nations and Coastal around</p>	<p style="text-align: right;">Page 89</p> <p>1 like that. I don't know because it's not specifying</p> <p>2 that. I am not aware of -- you know, if these</p> <p>3 records exist. As I have said I have contacted the</p> <p>4 person who is in charge of tracking the remittances</p> <p>5 and she gave me information for some of the policies</p> <p>6 in this time period. So I don't know if this</p> <p>7 information is incorporated into her records because</p> <p>8 obviously she has some remittance information for the</p> <p>9 period but --</p> <p>10 Q. Did you see any of these reports?</p> <p>11 A. I don't recall seeing anything -- so</p> <p>12 this is prior to November of '96. This was only in</p> <p>13 effect until I guess November of '96. So I don't</p> <p>14 recall if I've seen anything -- you know, reports</p> <p>15 before that date.</p> <p>16 Q. And at 13010 next to Record Retention it</p> <p>17 says: "Agent shall maintain in a manner and form as</p> <p>18 prescribed or approved by the principal all</p> <p>19 supporting documents which enable agent to issue a</p> <p>20 commitment binder or policy together with all books</p> <p>21 of account, files, documents, correspondence and</p> <p>22 records of all kinds which at any time shall be kept</p> <p>23 by agent or come into agent's possession or under</p> <p>24 agent's control relating to the transactions</p> <p>25 conducted by agent on behalf of the principal."</p>

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<p style="text-align: right;">Page 90</p> <p>1 Do you know whether or not Coastal Title 2 Agency kept its files and documents in accordance 3 with this record retention policy?</p> <p>4 A. Again, this is prior to November of '96 5 so I'm not sure what was done at that point. I'm 6 assuming they complied with the statutory period of 7 15 years in any event, and certainly when files were 8 requested of Coastal in connection with a claim most 9 of them were provided. I don't know that all were 10 provided but files tend to get lost in title 11 agencies. So I'm assuming that -- whether they 12 specifically complied with this or not I can't say 13 but they were holding on to files and...</p> <p>14 Q. Was there anyone at Nations who was in 15 charge of keeping up the relationship with Coastal 16 Title Agency, like there's a Nancy Koch for 17 Commonwealth who I think you testified was in charge 18 of maintaining that relationship. Was there anyone 19 at Nations responsible for that?</p> <p>20 A. I think Maureen Crowley was an agency 21 representative or I don't know if her title was 22 manager, and I think -- I'm not sure when she started 23 with the company. She may not have been there when 24 it was first acquired. And Kevin Cairns may have 25 worn all hats, agency and state counsel, initially,</p>	<p style="text-align: right;">Page 92</p> <p>1 A. Not at the time of these transactions. 2 I haven't seen anything at the time these 3 transactions took place.</p> <p>4 Q. Did that change at some point?</p> <p>5 A. I believe in the 2000s, 2003, there 6 might have been a memo written on Fidelity which 7 dealt with flip transactions.</p> <p>8 Q. Who was that written by?</p> <p>9 A. What is his name? I'll have to think of 10 this name. I'm not sure if he passed on some 11 information from home office. Ron Maass. I think it 12 might have been written by Ron Maass.</p> <p>13 Q. Was Walsh Securities referenced in that 14 memo?</p> <p>15 A. No, it was more general memo on 16 flipping.</p> <p>17 Q. And was that -- that was a change in 18 policy?</p> <p>19 A. I think there had been some federal 20 issued policy or requirements and I think about 21 reporting transactions that were within, I don't 22 know, a six-month period or something. I think in 23 connection with that document a memo was sent out.</p> <p>24 MR. MEE: We might make a request for 25 that document as well.</p>
<p style="text-align: right;">Page 91</p> <p>1 because I think that office in New Jersey was started 2 at once. So I'm not sure. I think he may have had 3 some in the beginning and certainly when Maureen came 4 on board and I think Maureen -- I think she may have 5 signed the '96 agency agreement at Fidelity so maybe 6 she was there right at the beginning.</p> <p>7 Q. Nancy Koch testified she looked at the 8 Coastal Title documents and she was surprised at the 9 way they were kept. Were there any communications 10 that you saw between Miss Crowley or Mr. Cairns with 11 Coastal Title to that effect?</p> <p>12 MR. HAYES: Object to the form of the 13 question. You can answer.</p> <p>14 A. I don't know that I've seen any 15 communications between Maureen and Kevin.</p> <p>16 Q. How about memoranda?</p> <p>17 A. I don't recall, and I'm not sure what 18 you mean by the way the files were kept, but I don't 19 recall any memoranda about the way the files were 20 kept.</p> <p>21 Q. Did Nations ever have a policy statement 22 about insuring flips on properties?</p> <p>23 A. Not to my knowledge. I'm sorry. Did 24 you say ever?</p> <p>25 Q. Yes.</p>	<p style="text-align: right;">Page 93</p> <p>1 MR. HAYES: Tell me what that has to do 2 with this litigation.</p> <p>3 MR. MEE: I'm sorry. Relevance?</p> <p>4 MR. HAYES: No. I think things that 5 happened seven or eight years after have no bearing 6 on the case and is probably outside the scope of what 7 you're entitled to but we can talk about that off the 8 record rather than on the record.</p> <p>9 MR. MEE: Sure.</p> <p>10 Q. What is the company's policy currently 11 on insuring flips?</p> <p>12 A. I don't know that they have a strict 13 position. Obviously they have to comply with 14 whatever government regulations or requirements 15 exist. It's obviously a practice that is of concern 16 to us. There are such thing as legitimate flips, but 17 I think that probably underwriting counsel would want 18 to be involved in reviewing that but --</p> <p>19 Q. How does it get to underwriting counsel?</p> <p>20 A. An agent or whoever is insuring the 21 transaction if it's a direct operation would have to 22 contact underwriting counsel.</p> <p>23 Q. How would the agent know?</p> <p>24 MR. HAYES: The agent know what?</p> <p>25 A. I think if the agent did a title search</p>

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<p style="text-align: right;">Page 94</p> <p>1 and saw title vested in one and knew it was going to 2 X and then Y because they were ultimately to insure 3 Y, they would know.</p> <p>4 Q. How about any policy statements 5 regarding uncovering fraud in a real estate closing? 6 Has the company ever issued any policy statements 7 regarding uncovering fraud, any directives, things to 8 look out for?</p> <p>9 A. I think -- the company, you mean 10 Fidelity I guess or --</p> <p>11 Q. I mean this is obviously somewhat of an 12 issue because I don't know -- I know that Nations was 13 subsumed by Fidelity at some point, but up until 14 fairly recently they were still operating as Nations. 15 So if you can answer the question, I mean, whether or 16 not it's -- if the parent is Fidelity then I would 17 say --</p> <p>18 A. I don't know that Nations -- I don't 19 know about anything issued on Nations. I don't know 20 of any underwriting memoranda. Fidelity had very 21 few. I don't know if it was -- if there was anything 22 on fraud. I mean obviously there was the flipping 23 memo that I mentioned. There are a few memos on 24 things I know that were not fraud. After 2009 or '10 25 management of the Fidelity agents kind of merged into</p>	<p style="text-align: right;">Page 96</p> <p>1 if someone issued those lists prior to Kevin Cairns 2 or Chris Marra. I'm not sure if they were ever 3 distributed. I know after that they didn't want to 4 distribute them because they weren't sure of the 5 origination of them, but they would send out -- I saw 6 a couple of memos where they had specific parties 7 that they would tell the agents: If you get any 8 deals with this party, then contact our office.</p> <p>9 Q. Back in 1996 and 1997 did 10 Nations/Nations, Fidelity issue an unapproved list to 11 their title agents?</p> <p>12 A. I don't know.</p> <p>13 Q. How would the company check on whether 14 or not the closing attorney was, let's say, barred?</p> <p>15 A. How would the --</p> <p>16 Q. Company?</p> <p>17 A. Company check on --</p> <p>18 Q. Approved attorney was barred in New 19 Jersey.</p> <p>20 A. Well, the agency is doing the closing so 21 you're asking how the agent would check or would -- 22 the underwriter is not conducting -- is not issuing 23 the title commitment, the closing service letter.</p> <p>24 Q. The closing service letter provides that 25 the actions of X attorney are covered pursuant to</p>
<p style="text-align: right;">Page 95</p> <p>1 the Chicago people so that the Chicago underwriting 2 counsel now includes the Fidelity and -- agents on 3 all their distributions and they have a lot more 4 memos so I know they're sending things out over the 5 last year or so. I don't know what they send because 6 I am not privy to each of the memos.</p> <p>7 Q. Who do they go to? Who have those memos 8 gone to? Agents?</p> <p>9 A. Yeah, they would go to agents.</p> <p>10 Q. Not approved attorneys?</p> <p>11 A. I don't -- no, that wouldn't be a normal 12 practice. I am not aware that Chicago send anything 13 to attorneys.</p> <p>14 Q. Did Nations have an approved attorney 15 list?</p> <p>16 A. Nations or Fidelity. What I've 17 discovered in my research was an internal memo at 18 Fidelity that attached two lists that I don't know 19 were ever distributed because I just don't have 20 evidence of that. And that they were unsure of how 21 the attorney names were added to that list.</p> <p>22 Q. Was that considered an unapproved list 23 like --</p> <p>24 A. They were attorneys that allegedly we 25 would not want to do business with. So I'm not sure</p>	<p style="text-align: right;">Page 97</p> <p>1 this letter. How would Nations/Nations/Fidelity know 2 whether or not that attorney was barred in New Jersey 3 let's say.</p> <p>4 MR. HAYES: Object to the form. She 5 indicated to you the problem with the question is 6 you're asking how Nations would check on a document 7 that's not issued by Nations.</p> <p>8 Q. How would the agent check?</p> <p>9 A. Again, this is a hypothetical. One, I 10 don't know if those lists that I've seen were ever 11 issued. They may have been and I just don't have the 12 transmittal memo. And, two, there's a Lawyer's Diary 13 which gives you generally who is admitted in the 14 state although it's obviously not up to the minute on 15 who has been disbarred.</p> <p>16 Q. Was it ever a concern to the company 17 that lawyers who may not have been barred were listed 18 as approved attorneys?</p> <p>19 A. Again, I can't tell you exactly what was 20 issued then and I don't have anybody to ask that 21 question to, to pose that question to.</p> <p>22 Q. Were there any company directives to the 23 title agents to check to see whether or not these 24 attorneys were barred?</p> <p>25 A. To check to see if they were admitted to</p>

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<p style="text-align: right;">Page 98</p> <p>1 the bar? I haven't seen any memos in what I have 2 been able to accumulate. Now, I'm told that the 3 Fidelity office, the state office moved and a lot of 4 things didn't seem to make it to the next office. I 5 don't know. I don't know what was there at the time 6 and I don't have a way to verify what was issued back 7 in '96 and '97.</p> <p>8 Q. So is it possible that back in 1996 and 9 1997 Nations -- Nations' and Fidelity's title agents 10 could have been issuing closing service letters for 11 attorneys that were not permitted to practice law in 12 the state?</p> <p>13 MR. HAYES: Objection.</p> <p>14 A. Was it permitted? You said possible? I 15 mean I don't know. I guess it's possible but I hope 16 it wasn't. I don't know what instructions -- I can't 17 verify what instructions had been given to them.</p> <p>18 Q. Was there someone within the company who 19 was charged with monitoring what the -- what the 20 company's agents were doing?</p> <p>21 A. Okay. Well, there's -- I don't know -- 22 we're not in every agent's office all the time. 23 Obviously there's a state manager that has some 24 overall responsibility for what's going on in the 25 state, and underwriting counsel, I guess initially at</p>	<p style="text-align: right;">Page 100</p> <p>1 A. I don't have a specific example but I'm 2 sure that they have. Actually I probably have 3 specifics. If they stole money, if they stole escrow 4 funds, there's probably some -- you know.</p> <p>5 Q. Was Coastal -- was the Coastal Title 6 Agency arrangement terminated for that reason, 7 because Coastal was doing something it shouldn't have 8 been doing?</p> <p>9 A. The termination letter does not state a 10 cause. It just says under the Provision 8A of the 11 agency agreement. I think it was mutual. It might 12 have been mutual. It doesn't state any cause, and I 13 don't think it was reported as cause to the state 14 because we report termination of the agent's 15 relationship to the Department of Insurance and I 16 don't think that reported any causal...</p> <p>17 Q. And was that letter issued by Fidelity?</p> <p>18 A. I believe it was, yes.</p> <p>19 MR. MEE: We're going to make a request 20 for the letter terminating Nations- Nations/Fidelity 21 agency agreement. Maybe I should just refer to it as 22 the company. We're also going to make a request for 23 the memos that Miss Sullivan had indicated regarding 24 the approved attorney list or unapproved attorney 25 list that she wasn't sure whether or not they were</p>
<p style="text-align: right;">Page 99</p> <p>1 that time it was Kevin Cairns around '96.</p> <p>2 Q. So how often would the company check in 3 on its agents?</p> <p>4 A. I was told that they did this type of 5 agent review every other year and they picked a 6 handful of agents to do underwriting audits each 7 year. They would sample a couple of files but they 8 were only picking, you know, a certain number of 9 agents so I don't know how often they did Coastal. I 10 don't have records of that.</p> <p>11 Q. To a certain extent the agent was left 12 to its own free devices?</p> <p>13 A. The agents often have a lot of 14 independence, sure. They're writing title all the 15 time that we don't see every transaction that they're 16 writing.</p> <p>17 Q. When was the -- what was the policy or 18 what was the procedure at the company if the company 19 determined that an agent was doing something it 20 wasn't supposed to be doing?</p> <p>21 A. You always had the ability under the 22 agency agreement to terminate them.</p> <p>23 Q. Did the company ever terminate an agent 24 for doing something that it wasn't supposed to be 25 doing?</p>	<p style="text-align: right;">Page 101</p> <p>1 submitted.</p> <p>2 Q. Not to belabor this point one more time 3 but do you know whether or not the company considered 4 all attorneys in New Jersey approved until they were 5 disbarred?</p> <p>6 A. Do I know in 1996 or seven what the 7 company considered?</p> <p>8 Q. Let me rephrase. Did the company 9 consider all attorneys in New Jersey approved until 10 they were disbarred?</p> <p>11 A. Again, I can't find memoranda related to 12 that at that time period so I can't state that to a 13 fact.</p> <p>14 Q. Do you know whether or not the company 15 was still -- let me rephrase. When was the last time 16 the company issued a closing service letter on behalf 17 of Stanley Yacker, Anthony Cicalese, Richard Pepsny 18 or Michael Alfieri?</p> <p>19 A. The last date? I don't know.</p> <p>20 Q. Do you know if it is still issuing 21 closing service letters on behalf of Richard Pepsny?</p> <p>22 A. They may be for Richard Pepsny.</p> <p>23 Q. What about Mr. Cicalese?</p> <p>24 A. I believe the other three are on the 25 unapproved list, which is now being issued as one</p>

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<p>1 document from Chicago Title. So you would have seen 2 it -- as with Commonwealth, I think they're all 3 issued as -- you know, for all companies from one 4 source so I think those other three were all on the 5 unapproved list.</p> <p>6 Q. Were these four attorneys considered 7 approved by the company in '96 and '97?</p> <p>8 A. I don't know of any list to compare it 9 to. I assume if Coastal had no advice not to, that 10 they were acting appropriately in issuing letters to 11 those attorneys.</p> <p>12 (A recess takes place.)</p> <p>13 Q. Earlier I believe you testified about 14 that you had done some kind of investigation and 15 determined that there were -- that the company had 16 received some remittances for policies that were 17 never issued. Am I characterizing that correctly?</p> <p>18 A. It appeared that we received some 19 remittances where we just had the commitment number 20 so I don't know if the policy had been issued. We 21 didn't have a copy of the policy because the person 22 who ran the search ran them on both Coastal's file 23 numbers and policy numbers.</p> <p>24 Q. So when the remittance was received by 25 the company would a policy be generated at that</p>	<p>1 they had not been received anything from Coastal in a 2 while I think they would send the agency rep down 3 there to see -- Coastal would make copies of the 4 policies and put them in a box for whatever 5 underwriter that they were writing for or something. 6 You know, this is what I've been told, and that our 7 representative would go down and pull the Fidelity 8 policies out of the box and write the remittance 9 information and then I guess Bob would cut them a 10 check.</p> <p>11 Q. Now, you had stated before that you 12 weren't able to find a company claims manual for the 13 '96, '97 period of time?</p> <p>14 A. Right.</p> <p>15 Q. Was there a corporate policy to set a 16 reserve on claims?</p> <p>17 A. I don't have any regulations. I mean I 18 don't have anything that was instructive to the 19 claims people at that time.</p> <p>20 Q. Was there a reserve set by Nations on 21 this claim?</p> <p>22 A. I don't recall if there was -- I think 23 at some point there were some reserves on files.</p> <p>24 Q. Presently you know --</p> <p>25 A. I don't know if it was set by Nations.</p>
Page 103	Page 105
<p>1 point?</p> <p>2 A. Well, the policy is generated by the 3 agent so -- used to be that an agent would not remit 4 until they issued the policy, and I have kind of 5 conflicting information on this. Chris Marra said 6 that Coastal did not remit until somebody from their 7 office actually went to Coastal's office and looked 8 at what policies they had issued and prepared the 9 remittance sheet and got the check, although I'm told 10 by Roberta that she has some remittances where we 11 don't have a copy of the policy and she thought there 12 had been a change, that they were supposed to -- they 13 were trying to get them to remit I think in a shorter 14 period of time than waiting for the policies because 15 you have to wait for cover records and everything 16 else. So I don't know if they -- it appears they may 17 have remitted on some commitments, but I don't have a 18 breakdown of how many or -- you know I just have what 19 is on that chart, which is what she found the 20 remittances for.</p> <p>21 Q. And so for -- is it Dave Marra?</p> <p>22 A. Chris Marra.</p> <p>23 Q. Chris Marra, when was that that he went 24 to Coastal and --</p> <p>25 A. I think any point during the year if</p>	<p>1 I don't know at what point it was set.</p> <p>2 Q. I don't know how to ask this next 3 question because I'm not sure -- do you know: At any 4 point in time were there two separate reserves, 5 whether there was one for Walsh's claims against 6 Fidelity and Walsh's claims against Nations?</p> <p>7 A. I think, yes, the claims -- they opened 8 a couple of claim files and they opened -- and then 9 they would put several Coastal files into each claim, 10 but they were breaking them down as to underwriter 11 and policy year and agent because they were trying to 12 keep the like ones together so that they could 13 distinguish which entities would be incurring the 14 expense or the loss.</p> <p>15 Q. So it sounds like there are multiple 16 reserves?</p> <p>17 A. I don't know that there are today but 18 there were multiple files opened, and I believe there 19 may have been multiple reserves at one time.</p> <p>20 Q. Was that done by Nations or you're not 21 sure?</p> <p>22 A. Again, since the companies were really 23 being operated by the same, you know, parties -- I 24 mean --</p> <p>25 Q. So by the time the claims rolled in, by</p>

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<p style="text-align: right;">Page 106</p> <p>1 the time --</p> <p>2 A. To the extent that the claim was opened</p> <p>3 by Nations' policies, I guess you would be saying it</p> <p>4 was a Nations reserve, and if the claim was opened on</p> <p>5 Fidelity, then the reserve would be against Fidelity.</p> <p>6 Q. At any point were those reserves rolled</p> <p>7 into a single reserve?</p> <p>8 A. Looks like to me the researches are in</p> <p>9 one file today. I'm not sure when or how that</p> <p>10 happened.</p> <p>11 Q. When you say reserves are in one file,</p> <p>12 does that mean there's a reserve for all of Walsh's</p> <p>13 claims, a single reserve, or are there still multiple</p> <p>14 reserves?</p> <p>15 A. Well, there's expense and loss reserves.</p> <p>16 Q. Okay. Was it customary for the company</p> <p>17 to set up reserves on claims?</p> <p>18 A. Yeah, I would say that you would usually</p> <p>19 set a reserve. Obviously you set an expense reserve</p> <p>20 based on anticipated cost and loss on anticipated --</p> <p>21 you know, or what you thought could be the exposure,</p> <p>22 you know, there's kind of an art, you know.</p> <p>23 Q. What about major claims? Are reserves</p> <p>24 set on all major claims?</p> <p>25 A. I mean, if you think there's going to be</p>	<p style="text-align: right;">Page 108</p> <p>1 listed on Walsh's letter from July 28, 1997 marked as</p> <p>2 Nations-3 in advance of this deposition to prepare?</p> <p>3 A. I'm sorry. Did I review what files?</p> <p>4 Coastal's?</p> <p>5 Q. Let me show you the letter. On</p> <p>6 Nations-3, if you look at the last page there's a</p> <p>7 list of properties, and I was wondering whether or</p> <p>8 not you reviewed any of the files on these properties</p> <p>9 to prepare for this deposition?</p> <p>10 A. No, I don't have copies in our office of</p> <p>11 the Coastal files for any of these properties.</p> <p>12 Q. Did you review any closing service</p> <p>13 letters or anything like that pertaining to these</p> <p>14 properties?</p> <p>15 A. Not specific to these properties.</p> <p>16 Obviously I have looked at some closing service</p> <p>17 letters in connection with the litigation.</p> <p>18 (Nations-6, Closing Service Letter dated</p> <p>19 July 10, 1996, is received and marked for</p> <p>20 identification.)</p> <p>21 Q. I'm handing you what's been marked as</p> <p>22 Nations-6. It's a closing service letter dated July</p> <p>23 10, 1997 -- I'm sorry, 1996, from Nations Title. Who</p> <p>24 would have made a request for this type of letter?</p> <p>25 A. A closing service letter would normally</p>
<p style="text-align: right;">Page 107</p> <p>1 no loss you probably have zero loss reserve. If</p> <p>2 you're going to have if you're in litigation, you're</p> <p>3 necessarily going to have an expense reserve.</p> <p>4 Q. Is there a loss reserve for this case?</p> <p>5 A. Yes.</p> <p>6 Q. What is the amount?</p> <p>7 MR. HAYES: Object. And instruct you</p> <p>8 not to answer. Work product. You're not entitled to</p> <p>9 it.</p> <p>10 MR. MEE: Okay. I am asking for the</p> <p>11 fact of the amount of the reserve. I'm not asking</p> <p>12 for any communications that you and your client may</p> <p>13 have had as dealing with how to calculate that</p> <p>14 amount.</p> <p>15 MR. HAYES: Same objection. You're not</p> <p>16 entitled to that information in my opinion under New</p> <p>17 Jersey law.</p> <p>18 MR. MEE: I think we're going to have to</p> <p>19 call the judge.</p> <p>20 MR. HAYES: You're going to have to.</p> <p>21 MR. MEE: Off the record until we get</p> <p>22 that set up.</p> <p>23 (A discussion takes place off the</p> <p>24 record).</p> <p>25 Q. Did you review any particular properties</p>	<p style="text-align: right;">Page 109</p> <p>1 be requested by the attorney who orders the title</p> <p>2 insurance commitment.</p> <p>3 Q. And on the first page after National</p> <p>4 Home Funding it says: Its successors and/or its</p> <p>5 assigns. What does the company interpret that to</p> <p>6 mean?</p> <p>7 A. I think the company interprets that to</p> <p>8 mean National Home Funding or anyone they assign this</p> <p>9 loan commitment to that would be funding the</p> <p>10 transaction.</p> <p>11 Q. There's a file number halfway down the</p> <p>12 page. It says CT-17765 and then (A), capital A. Do</p> <p>13 you know why Coastal Title is using this type of file</p> <p>14 number?</p> <p>15 MR. HAYES: Objection.</p> <p>16 MR. KOTT: I object as well.</p> <p>17 MR. HAYES: You can answer the question.</p> <p>18 A. I saw something in the notes of the</p> <p>19 meeting with Bob Agel that it was a pre-sell</p> <p>20 commitment. Again, those were notes taken at a</p> <p>21 meeting and whether that's actually -- that's what</p> <p>22 they report Bob Agel said it was for.</p> <p>23 Q. Which meeting notes are you referring</p> <p>24 to?</p> <p>25 A. Todd Pajonas, Kevin Cairns and Maureen</p>

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<p>1 Crowley met with Bob Agel in February of 1998. 2 Q. I think we already requested that. Does 3 this document cover a particular -- this particular 4 transaction, or does it cover this particular lawyer 5 or the particular premises? 6 MR. HAYES: I object to the form. You 7 can answer, Miss Sullivan. 8 A. Well, it states that the issuing agent 9 or attorney whose conduct is covered is Richard 10 Pepsny of the law office of Michael Alfieri. And, 11 I'm sorry, did you say what property? It's giving a 12 street address. I don't know why it doesn't give a 13 town or any further information but it is stating a 14 street address and what I assume is the borrower's 15 name. 16 Q. If Michael Alfieri were the actual 17 closing attorney on this property as opposed to 18 Richard Pepsny, would it be the company's position 19 that there's no coverage under this closing letter? 20 A. I guess I don't know what position they 21 have taken on that in the past and what position they 22 would take on it. 23 Q. And this was -- this document was 24 prepared by Coastal? 25 A. It says -- yeah, on the second page,</p>	<p>1 Q. Do you know if back in 1996 whether it 2 was solely paper deeds that were being filed? Were 3 electronic copies being filed? 4 A. I don't think there was electronic 5 filing at that time. 6 Q. So -- 7 A. But I can't say positively. I don't 8 believe there was. 9 Q. What was the process of recording these 10 deeds? 11 A. Well, you would take it down to the 12 county clerk's office or mail it, however you were 13 going to transmit it, and they would stamp it, you 14 know, recorded with the instrument number. Beyond 15 that I'm not sure. I believe it goes into a stack 16 and the county will copy them and put them into a 17 binder format, and I believe they were still doing 18 that in '96 but I am not positive, because different 19 counties also changed over at different times so I'm 20 not sure. 21 Q. At page 3472 up at the top, the 22 description -- the commitment number is CT 7765 23 without the capital A. Do you have any knowledge as 24 to why there's no capital A in parenthesis on this 25 document?</p>
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<p>1 issuing office, Coastal Title. 2 Q. And who would Coastal have sent this to? 3 A. Normally it would go out with the 4 commitment, but if the attorney said: Send it 5 directly to the lender, they might have done that. I 6 don't know what the instructions were to Coastal. 7 (Nations-7, Deed dated May 6, 1996, is 8 received and marked for identification.) 9 Q. I've handed you what's been marked as 10 Nations-7, which appears to be a deed dated July 25, 11 1996 from Citicorp North America to Cristo Property 12 Management. Can you tell from this document when it 13 was recorded? 14 A. It looks like a county stamp on the 15 first page -- although it's not legible. May 6, 19 16 something. I have to look at the last -- I can't see 17 any book or page. 18 Q. Try CT 3474. 19 A. This is clearer. Recorded May 6, 1997. 20 Has an instrument number. I don't see a book and 21 page but it has an instrument number. 22 Q. Do you have any knowledge as to why this 23 document was recorded so long after the deed was 24 made? 25 A. No.</p>	<p>1 A. No. 2 Q. Can you tell whether or not this portion 3 of the deed was prepared by Coastal Title? 4 A. I assume that this description is taken 5 out of the title insurance commitment that Coastal 6 provided. I don't think Coastal prepared the deed. 7 (Nations-8, Deed dated July 25, 1996, is 8 received and marked for identification.) 9 Q. I'm handing you what's been marked as 10 Nations-8, which appears to be a deed also dated July 11 25, 1996, from Cristo Property Management to George 12 Leodis. Do you know why Coastal's stamp is at the 13 top of this document? 14 A. I don't know. 15 Q. Directing your attention to CT 3470, are 16 you able to tell when this document was recorded? 17 A. Looks like May 6, 1997. 18 Q. Going back to the first page, it states 19 down at the bottom: "Being the same premises 20 conveyed to the grantor herein by deed from Bristol 21 Oaks, LP dated July 25, 1996 in which deed is 22 intended to be recorded simultaneously herewith." 23 I'm going to also direct your attention 24 back to this deed right here. 25 A. I'm sorry. You asked why Coastal's name</p>

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Donna Sullivan

<p>Page 114</p> <p>1 was here?</p> <p>2 Q. Yes.</p> <p>3 A. I don't know. There's an R&R next to it</p> <p>4 so it could be record and return to Coastal.</p> <p>5 Q. Why would Coastal have wanted these</p> <p>6 documents to be recorded and returned to it?</p> <p>7 A. Coastal did the recording. They might</p> <p>8 have wanted to see them come back and know that they</p> <p>9 were actually recorded.</p> <p>10 Q. I'm going to direct your attention to</p> <p>11 Nations-7. The deed here on Nations-7 appears to be</p> <p>12 from Citicorp to Cristo and then on Nations-8 it says</p> <p>13 at the bottom that Cristo received it from Bristol</p> <p>14 Oaks, LP. I'm just curious. Do you think there's an</p> <p>15 error here in the way the deed is drafted? Down at</p> <p>16 the bottom.</p> <p>17 A. Well, I mean they look like the same</p> <p>18 property so it could be an error in the recital.</p> <p>19 Q. Was this a document that Coastal Title</p> <p>20 Agency would have reviewed before it recorded it?</p> <p>21 A. I'm not sure what review they did.</p> <p>22 Q. And then on looking at Nations-8 on the</p> <p>23 second page, the top, the commitment says CT-17765,</p> <p>24 which appears to be the same property as Nations-6</p> <p>25 but they carry different file numbers. Do you see</p>	<p>Page 116</p> <p>1 Nations-8 it's Cristo to Leodis.</p> <p>2 A. Uh-huh.</p> <p>3 Q. But down here it says: By deed from</p> <p>4 Bristol to Cristo. In other words, the grantor is</p> <p>5 Cristo here. On this document, however, Nations-7,</p> <p>6 it states that Cristo received the property from</p> <p>7 Citicorp. Is that something the title agent would</p> <p>8 have picked up on?</p> <p>9 A. When they were recording?</p> <p>10 Q. No, when they were preparing these</p> <p>11 documents.</p> <p>12 MR. HAYES: Object to the form of the</p> <p>13 question, because I don't think you have established</p> <p>14 with this witness that they prepared the documents.</p> <p>15 MR. MEE: The witness stated that the</p> <p>16 title agent prepared Nations-6.</p> <p>17 Q. So in preparation of Nations-6 would</p> <p>18 they have been aware of the fact that it was deeded</p> <p>19 from Citigroup to Cristo rather than from Bristol to</p> <p>20 Cristo?</p> <p>21 A. I don't know what their title commitment</p> <p>22 showed. It seems like if these deeds were being</p> <p>23 simultaneously recorded, they weren't on record at</p> <p>24 the time of the commitment. So I don't know whether</p> <p>25 the commitment would have shown that Citicorp was in</p>
<p>Page 115</p> <p>1 that?</p> <p>2 MR. MEE: We will go off the record</p> <p>3 right now and let the witness excuse herself.</p> <p>4 (A discussion takes place off the</p> <p>5 record).</p> <p>6 (A telephonic discussion takes place</p> <p>7 with Magistrate Judge John Shipp).</p> <p>8 Q. The question is whether or not the</p> <p>9 closing service letter would cover the transaction of</p> <p>10 this deed marked Nations-8 since they carry different</p> <p>11 file numbers?</p> <p>12 A. Well, I'm not sure. This is a deed</p> <p>13 into -- into Leodis and I assume that Leodis is the</p> <p>14 borrower or proposed borrower on the commitment. I</p> <p>15 don't know that we would differentiate between the</p> <p>16 letter designation. It appears to be the same</p> <p>17 property. Although it's not a full address there's</p> <p>18 an address with the same street address in Neptune on</p> <p>19 the deed. So the deed and the closing service letter</p> <p>20 appear to be for the same property and the commitment</p> <p>21 reference is the same except for the A.</p> <p>22 Q. Would the title agent have picked up on</p> <p>23 the fact that on Nations-8 that there was a different</p> <p>24 deed going to Cristo? In other words, if you look --</p> <p>25 this is a little confusing but if you look at</p>	<p>Page 117</p> <p>1 title. I don't know.</p> <p>2 (Nations-9, Commitment for Title</p> <p>3 Insurance, is received and marked for</p> <p>4 identification.)</p> <p>5 Q. I've handed to you what's been marked as</p> <p>6 Nations-9. It's a title commitment from Nations. If</p> <p>7 you look at the second page, CT 3416, at the top it</p> <p>8 says: Effective date, May 21, 1996. Do you know</p> <p>9 whether or not that was the date that Commonwealth --</p> <p>10 I'm sorry, the date that Coastal Title prepared this</p> <p>11 document?</p> <p>12 A. No, I doubt it was.</p> <p>13 Q. You say "doubt." What do you think --</p> <p>14 A. Normally they would use the effective</p> <p>15 date of their search work, which was the last date</p> <p>16 they were able to search to any county records as to</p> <p>17 the effective date of the commitment.</p> <p>18 Q. So Coastal either conducted a search or</p> <p>19 someone conducted a search on behalf of Coastal up</p> <p>20 through May 21, 1996?</p> <p>21 A. That's what I would assume.</p> <p>22 Q. Down at the bottom under paragraph two</p> <p>23 it states that the title to the fee simple estate or</p> <p>24 interest in the land described or referred to,</p> <p>25 etcetera, vested in Marjorie Hawk. How come it</p>

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<p style="text-align: right;">Page 118</p> <p>1 doesn't say Citigroup?</p> <p>2 A. Well, I'm assuming that this is what the 3 county records showed as of that date. This 4 doesn't -- this was correct, this recital. Citicorp 5 didn't take title until July -- deed dated July of 6 '96, whenever it was delivered.</p> <p>7 Q. You're referring to Nations-7. Do you 8 mean that Cristo didn't take title until July --</p> <p>9 A. I mean that it says: Being the same 10 premises conveyed to the grantor, which is Citicorp, 11 by deed from Bristol Oaks dated July 28, 1996.</p> <p>12 Q. Should it have said -- going back to 13 Nations-9 should it have said Bristol Oaks?</p> <p>14 A. I don't know what the records reflected. 15 It should say what the records reflect, and if this 16 was what the records reflected, and I don't know when 17 Bristol Oaks took title.</p> <p>18 Q. At page -- staying with Nations-9, going 19 to page 3418. This is the Schedule B to which you 20 were referring to earlier in your deposition.</p> <p>21 A. "Requirements" section of the 22 commitment?</p> <p>23 Q. Why don't we go back. This portion of 24 the commitment would have been drafted by who?</p> <p>25 A. Coastal would have drafted the</p>	<p style="text-align: right;">Page 120</p> <p>1 recording and wanted obviously to have a record that 2 they were recorded.</p> <p>3 Q. Did Nations have a policy regarding 4 recording documents by its agents?</p> <p>5 A. Not to my knowledge. I don't know if 6 there was any instructions to agents regarding that.</p> <p>7 Q. Can you tell by this document whether or 8 when Walsh Securities would be considered of record?</p> <p>9 A. This document does not run to the 10 benefit of Walsh Securities. The mortgage is to 11 National Home Funding.</p> <p>12 Q. Can you tell when National Home Funding 13 would have been on record?</p> <p>14 A. It's recorded May 6 of '97.</p> <p>15 Q. Can you -- would the company have taken 16 issue with Coastal recording this mortgage nearly ten 17 months after it was executed?</p> <p>18 A. I don't think that Coastal was 19 responsible for the delay so I'm not sure what issue 20 the company would have with Coastal.</p> <p>21 Q. Coastal took the initiative of recording 22 the document. Right? As it appears from the top?</p> <p>23 A. It appears they recorded it, and how 24 exactly it came about I'm not sure.</p> <p>25 Q. Would that have been something the</p>
<p style="text-align: right;">Page 119</p> <p>1 commitment.</p> <p>2 Q. And what would they have done in order 3 to draft this portions of the commitment?</p> <p>4 A. They would have reviewed the title 5 search and set up the requirements in order to insure 6 into the insured.</p> <p>7 Q. And there are certain requirements -- 8 well, strike that. At -- on the same page, 3418, at 9 C, paragraph C, it says: A deed from sheriff of 10 Monmouth County to Bristol Oaks.</p> <p>11 (Nations-10, Mortgage dated July 25, 12 1996, is received and marked for identification.)</p> <p>13 Q. I have handed you what's been marked as 14 Nations-10, which is a mortgage from Walsh Securities 15 to George Leodis. Do you know why Coastal would have 16 put its stamp on top of Walsh Securities' name at the 17 top of that document on the first page?</p> <p>18 A. I am assuming that -- I am aware through 19 even my depositions that there were a lot of 20 unrecorded documents that were delivered to Coastal 21 for recording. So Coastal may have undertaken to 22 record all those documents that the attorney had not 23 recorded and they may have, you know, stamped it with 24 their name to record and return the documents to them 25 since they were the ones that were sending them for</p>	<p style="text-align: right;">Page 121</p> <p>1 company would have wanted its title agent to report 2 to the company, that it was holding a mortgage that 3 was executed ten months earlier?</p> <p>4 MR. KOTT: I object to the form.</p> <p>5 Assuming a fact not in evidence.</p> <p>6 MR. HAYES: Objection.</p> <p>7 A. I believe under normal course an agent 8 is going to find some of their documents that they're 9 going to insure have not been recorded. I don't 10 think that they report all of those individually, you 11 know, to the underwriter. If there's a pattern or 12 practice they may report it.</p> <p>13 Q. In this -- on this particular property, 14 the documents you have looked at so far, it appears 15 that they were all executed in July -- on July 25, 16 1996, and that Coastal at some point as well it 17 appears that Coastal recorded the documents so one 18 might assume that Coastal was in possession of it on 19 May 6 of 1997.</p> <p>20 Would the company have wanted Coastal to 21 report to the company that it was in possession of 22 all these deeds and mortgages that were dated ten 23 months earlier?</p> <p>24 MR. HAYES: Objection. You may answer.</p> <p>25 A. I'm not sure I can speak to whoever was</p>

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